WILLIAM SHILLABER

VS.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, ET AL.

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UNITED STATES CIRCUIT COURT

DISTRICT OF MINNESOTA

THIRD DIVISION

WILLIAM SHILLABER,

Complainant,

VS.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, et al.,

Defendants,

TESTIMONY

VOLUME 1.

WITH LIST OF WITNESSES.

CHAS. E. OTIS, MASTER.

GEO. N. HILLMAN, Reporter.

UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION.

(*In Equity.*)

WILLIAM SHILLABER,

Complainant,

vs.

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, GEORGE T. SIMPSON (SUBSTITUTED FOR EDWARD T. YOUNG), IRA B. MILLS, CHARLES F. STAPLES, AND CHARLES E. ELMQUIST (SUBSTITUTED FOR WILLIAM E. YOUNG),

Defendants.

On Tuesday morning, August 4, 1908, the hearing of the above entitled cause was begun before Hon. Charles E. Otis, Special Master, in room 306 Federal building, St. Paul, Minn.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant,

EDWARD T. YOUNG, Attorney General of the State of Minnesota,

THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for Defendants Railroad & Warehouse Commission, et al.

LEMUEL G. SCOTT,
sworn on behalf of Complainant, testified.

By Mr. BUTLER:

Q. What is your occupation, Mr. Scott?

A. Auditor of the Minneapolis & St. Louis Railroad Company.

Q. How long have you been employed by that Company?

A. Since December 1, 1900.

Q. And in what capacities?

A. As Chief Clerk to the Auditor from December 1, 1900, to April 1, 1903, and since April 1, 1903, as Auditor.

Q. You are the chief accounting officer of the Company?

A. Yes, sir.

Q. Have been since 1903?

A. Yes, sir.

Q. And its general office is where?

A. In Minneapolis.

Q. And whereabouts in Minneapolis?

A. In the Metropolitan Life building.

Q. That is the old Guaranty Loan building?

A. The old Guaranty Loan building.

Q. You are familiar with its system of accounts and accounting?

A. Yes, sir.

Q. And since you have been general Auditor have the accounts been kept under your direction?

A. Yes, sir.

Q. Now, in general terms, I would like to have you describe what accounts are kept by your Company.

A. We keep all accounts necessary to determine the revenues and the cost of earning those revenues, and all the accounts in the form prescribed by the Interstate Commerce Commission, and they are also in proper form so that the returns can be made to the several states through which the road operates.

Q. That is, the accounts are so kept that there is obtainable therefrom the information called for by the various state commissions, as well as by the Interstate Commerce Commission?

A. Yes, sir.

Q. And during the time that you have been Auditor has

there been furnished to you by the Minnesota Railroad & Warehouse Commission blank forms and directions for the making of reports to that Commission?

A. Yes, sir.

Q. And have such reports been regularly made?

A. Yes, sir.

Q. Annually, I believe?

A. Yes, sir.

Q. And the books of account, then, are so kept as to comply with the requirements and necessities of these reports?

A. Yes, sir.

Q. We show you Complainant's Ex. 1–Scott, and ask you if that is the form of annual report furnished to you by the Railroad and Warehouse Commission of this state upon which to make your reports to that commission.

A. Yes, sir; that is the report for the fiscal year ending June 30, 1907. The one for the current year has not yet been received.

Q. That is the form of the report?

A. The form of report, yes, sir.

Q. It has not been filled out, that particular one?

A. No, sir.

Q. And can you tell us whether or not that form is in substantially the same form as the report required by the Interstate Commerce Commission?

A. It is.

Q. And is this form for this particular year (the fiscal year ending June 30, 1907, substantially the same form as has been used for some years last past?

A. Yes, sir, with perhaps a few minor changes in some of the tables.

Mr. BUTLER: Now, for the purpose of illustrating and describing the manner of keeping the accounts of the defendant

Company, the Complainant offers Complainant's Ex. 1–Scott in evidence.

Mr. O'BRIEN: It is objected to as irrelevant and immaterial and not the best evidence.

The MASTER: Objection noted. Proceed.

Mr. O'BRIEN: I think if they desire to show how the accounts are kept the books are the best evidence.

The MASTER: The Master does not rule on the testimony unless it is specially objectionable.

Mr. O'BRIEN: I suggest, however, for the purpose of showing how they kept their books, their books are the best evidence.

Q. Now, with respect to the records of the Company, they are all kept at the general office in the Guaranty Loan building in Minneapolis?

A. The main records are; the general books, ledgers and abstract books, etc.; some of the files are not there for lack of room; they are stored in other places.

Q. But they are all at the offices and upon the premises of the Company?

A. Yes, sir.

The MASTER: In this case, as in the other, I would like to have copies of these exhibits furnished, the originals for the Court to be reported by the Master, and another for the Master's own use, and then such other copies as counsel may desire.

Mr. BUTLER: We will do that. We are not perfectly certain that we have all the copies at hand as they are offered, but in case we haven't we will supply the number of copies required.

Q. You are familiar with the location of the lines of your Company, are you?

A. Yes, sir.

Q. I show you a paper which is marked Complainant's

Ex. 2–Scott, and ask you whether or not that map shows in a general way the location of the lines of the Minneapolis & St. Louis Railway Company.

A. Yes, sir, it does.

Q. Now, upon that map I observe certain very heavy lines indicating railroads; what railroads are indicated by the heavy, broad black lines?

A. The Minneapolis & St. Louis and the Iowa Central; that is, the Minneapolis & St. Louis and lines that that Company operates, and the Iowa Central Railway Company.

Q. Can you on that map indicate to the Master the lines of the Minneapolis & St. Louis Company by stating the stations or places between which the lines run?

A. Yes, sir.

Q. Kindly do that.

A. Do you wish me to include the operated properties also, or the Minneapolis & St. Louis proper?

Q. The Minneapolis & St. Louis proper.

A. From St. Paul, Minnesota, to Watertown, South Dakota; from Winthrop, Minnesota, to Storm Lake, Iowa; from Minneapolis to Angus, Iowa.

Q. And the other lines, indicated by the broad marks on this little map, are not lines owned by the defendant Minneapolis & St. Louis Company?

A. No, sir, they are not.

Q. Have you prepared a statement showing the mileage owned by that Company, and mileage leased by it, and mileage operated under track rights, and the amount in each state and the percentage of the whole in each state?

A. Yes, sir

Q. Have you that statement here?

Witness produces paper, marked for identification Complainant's Ex. 3–Scott.

Q. This paper marked Complainant's Ex. 3–Scott is the

statement to which you have referred in answer to my last question?

A. Yes, sir.

Q. And shows, as I understand it, the trackage used in operation of the road, the single tracks owned in Minnesota, Iowa, and South Dakota; the mileage in each state and leased lines, and lines operated under trackage rights, showing the total mileage, mileage in each state, and the percentage of each?

A. Yes, sir.

Mr. BUTLER: Complainant's Ex. 3–Scott is offered in evidence.

Q. Mr. Scott, have you also prepared a statement showing the amount of stock, cost and par value, that your Company owns in the Minnesota Transfer Railway Company and in the St. Paul Union Depot Company, the Railway Transfer Company of Minneapolis, also showing the rolling stock and the apportionment thereof among the states on the basis of locomotive and car mileage owned and leased, and apportionment among the states on the basis of gross revenue owned and leased, and the totals thereof?

A. Yes, sir.

Q. As of what date?

A. April 30, 1908.

Q. Have you that statement with you?

Witness produces paper marked Complainant's Ex. 4–Scott.

Q. Is the paper marked Complainant's Ex. 4–Scott such statement?

A. Yes, sir.

Mr. BUTLER: Complainant's Ex. 4–Scott is offered in evidence.

Q. Have you also prepared from the books and records of your Company a statement of the funded debt of the Company, showing the property covered and the location of the

same with respect to states?

A. Yes, sir.

Q. Have you the statement?

Witness produces statement marked Complainant's Ex. 5–Scott.

Q. Mr. Scott, will you take Ex. 5 and state in your own way what is shown thereon?

A. This exhibit will show the entire bonded indebtedness of the Minneapolis & St. Louis Company, and where the bond would cover (an old issue) would cover mileage within the state of Minnesota the entire amount of that bond has been assigned to the state of Minnesota; and the third item on that exhibit—the Iowa extension—that bond covers mileage from Albert Lea to Fort Dodge, which is mileage within both the states of Minnesota and Iowa, and that mortgage has been divided between the two states on the basis of the road mileage. And the last two issues, the first consolidated and the first refunding, are issues that cover the mileage of the entire property, and that amount (the amount of those two issues) has been divided between the three states on the basis of the road mileage. In other words, wherever the bond applies strictly to Minnesota mileage it has been so stated in this statement and localized.

Q. That is, the statement shows the total funded debt and the apportionment among the states on the basis you have just described?

A. Yes, sir.

Q. And also shows the percentage in each state?

A. Of the total.

Q. Of the whole?

A. Yes, sir.

Q. And does it also show the annual interest on the total and on the amount so apportioned to each state?

A. The interest is arrived at, that is, a division of the in-

terest among the states, is arrived at on the same basis that the bonds are divided among the states; that is, taking the first, second and fourth issues, the interest on those bonds has been charged to Minnesota and Iowa in just the same way that the mortgage applies.

Mr. SEEVERS: I don't think you answered Mr. Butler's question. He asks whether that exhibit shows the division and how it was arrived at.

WITNESS: It shows the division of interest, but the question called for how the bonds are divided and I simply made a statement that the interest is divided on the same basis.

Mr. BUTLER: Complainant's Ex. 5–Scott is offered in evidence.

Mr. DURMENT: I suppose that in all these statements, as it has in the other case, it ought to appear at this time in the record whether, when they offer them, they are offered as statements from the books, and with them is the offer to produce the original information from which they are made up, if called for in the course of the trial.

Mr. BUTLER: I think that is right. That is my understanding of it.

Mr. DURMENT: That ought to be understood in the record, that is all.

Mr. BUTLER: I think that is right. I think that may be understood.

Q. Now, did you make a statement showing the funded debt and apportioning it among the states upon any basis other than the basis shown in Complainant's Ex. 5?

A. Yes, sir, I did.

Q. And have you that here?

A. Yes, sir.

Statement produced by witness and marked Complainant's Ex. 6–Scott.

Q. Is the paper marked Complainant's Ex. 6–Scott such statement?.

A. Yes, sir.

Q. Now, will you describe to the Master the basis of apportionment of the funded debt indicated upon Ex. 6?

A. The mortgages that could be localized or that were localized, confined to certain pieces of property, the amount of that mortgage has been assigned to Minnesota and Iowa in just the same form as the preceding exhibit.

Q. Ex. 5?

A. Ex. 5; but the mortgages which cover the entire property in all three states (the first consolidated and first refunding) the amount of those mortgages has been divided, apportioned among the three states on the basis of the gross earnings for the year ended April 30, 1908.

Q. That is to say, the bonds secured by mortgage which covers only Minnesota property are charged to the Minnesota property?

A. Yes, sir.

Q. And the bonds secured by mortgage covering Minnesota and other property are apportioned between the states on the basis of the gross earnings of the lines in each state?

A. Yes, sir.

The MASTER: Were they distributed on the basis of the gross earnings in the several states, or just simply in the three states; that is, in each of the states?

Mr. BUTLER: Yes, as I understand the situation, certain mortgages cover Minnesota property only.

The MASTER: I understand that.

Mr. BUTLER: And those bonds are charged to Minnesota. Then certain other mortgages cover the whole property. Statement Ex. 5 already received in evidence, divides the latter on the basis of the number of miles in each state. This statement, Ex. 6, divides the latter class of bonds on the basis of the

amount of the gross earnings in each state.

The MASTER: That is what I wanted,—in each state?

Mr. BUTLER: Yes, in each state.

The MASTER: That is what I understood.

Q. And the gross earnings for what period?

A. The year ending April 30, 1908.

Mr. BUTLER: Ex. 6 is offered in evidence.

By Mr. O'BRIEN:

Q. Does the fiscal year of your Company end on the 30th of April, 1908?

A. No, sir.

Q. Do any of the reports that you make to the Interstate Commerce Commission or any of the states divide the year at that period?

A. Not the annual reports, no, sir.

Q. Why did you make this statement on the basis of earnings for a year which is not the end of your fiscal year, nor is it the end of any accounting year, either to the Interstate Commerce Commission or any of the states?

A. At that time that was the latest results that we had.

Q. Your books are not closed for the year at that time, are they?

A. They were not at that time, no, sir.

Q. Are they now?

A. Yes, sir.

Q. So that they can be verified by the preceding year?

A. Yes, sir.

By Mr. BUTLER:

Q. Mr. Scott, may a division readily be made of this funded debt on the basis of gross earnings for any fiscal year?

A. Any period.

Q. Any fiscal year that has actually elapsed?

A. Yes, sir.

Q. Or for any other period of time, may it not?

A. Any period of time that you might wish it for.

Q. Or any group of periods of time,—which is merely a matter of taking the earnings and making the division by percentage, is it not?

A. Yes, sir.

Mr. O'BRIEN: This last group that you have made happens to include the period of recent depression, does it not?

WITNESS: A portion of it only, a very small portion of it for our property, not over two months.

Q. The depression was not particularly localized to any part of your line, was it?

A. No, sir.

Q. And have you from the books and records of your Company made a statement showing the cost of property and its investments to April 30, 1908?

A. Yes, sir.

Q. And have you that with you?

A. Yes, sir.

Witness produces statement marked Complainant's Ex. 7–Scott.

Q. Is Complainant's Ex. 7–Scott the statement to which reference was made in the last question and answer?

A. Yes, sir.

Q. And will you take it and state in your own way what is shown thereon?

A. The property cost, according to the book records, the general books of the Company; in other words, the accounts that go to show or that are ordinarily considered cost of road and equipment,—the general railroad term. This information was compiled right from the general ledgers of the Company.

Q. And refers to the whole line, does it?

A. Yes, sir.

Q. It contains five pages, as I observe, and on the last page I note under the caption "Average Price of Bonds as shown

by April, 1908, Railroad Quotation Record," and "Value of Bonds Based upon Above Average Prices," and the same with respect to stocks.

A. Yes, sir.

Q. Those computations were made on the basis of the value of the bonds and stock and the prices referred to in the statement?

A. Yes, sir.

Mr. BUTLER: Ex. 7 is offered in evidence.

Q. Have you made any statement of the cost of the property and the investments and the apportionment among the states on different bases?

A. Yes, sir.

Q. And upon what different bases?

A. The bases of owned mileage, basis of gross revenue—

Q. Earned in each state?

A. Earned in each state, and as per Ex. 5.

Q. And on the basis of this paper marked Ex. 6?

A. Yes, sir.

Q. That is to say, the cost was divided on the basis of mileage owned in each state and on the basis of gross earnings of the Minneapolis & St. Louis in each state?

A. Yes.

Q. And on the same basis that the funded debt was divided in Ex. 5 and the same basis that the funded debt was divided in Ex. 6?

A. Yes, sir.

Q. Have you such a statement?

Witness produces Complainant's Ex. 8-Scott and it is offered in evidence.

Q. Have you from the books and records and papers of the Company made any statement comparing passenger operating expenses and taxes chargeable to passengers for the year ending April 30, 1907, with the period just one year later, the

year ending April 30, 1908, and a similar statement with respect to freight earnings, and a similar statement with respect to freight and passenger earnings taken together?

A. This table refers to operating expenses and taxes.

Q. Only?

A. Yes, and your last question was about the freight in total, you mentioned earnings.

Q. I meant operating expenses and taxes.

A. Operating expenses and taxes.

Q. You have such a statement?

A. Yes, sir.

Witness produces statement marked Complainant's Ex. 9–Scott.

Q. Is Complainant's Ex. 9 such statement as was referred to in the last question and answer?

A. Yes, sir.

Q. In addition to the things that we have already mentioned, does it show the increase or decrease of the operating expenses and taxes upon the basis of the comparisons made on the statement?

A. Yes, sir.

Mr. BUTLER: Ex. 9 is offered in evidence.

Q. And did you from the books and papers and records of your Company make a statement of passenger statistics, comparing the year ending April 30, 1908, with the year ending April 30, 1907, and showing the number of passengers carried in each state, passengers carried one mile in each state, and total, together with the revenue derived from the movement of passengers only, and passenger revenue from all sources in each state, and the total, and similar statistics with respect to the freight business for the same periods, showing the tons moved and tons one mile, revenue from freight movement only, and freight revenue from all sources in each state, and the

totals; and also the total freight and passenger business in each state?

A. Yes, sir.

Q. Have you that statement here?

Witness produces statement marked Complainant's Ex. 10-Scott.

Q. And is this paper marked Complainant's Ex. 10 such statement?

A. Yes, sir.

Q. Was there any increase in the mileage of the road during that period? I observe at the foot a note making reference to that.

A. Yes, sir, there was.

Q. And where was the increased mileage?

A. In South Dakota.

Q. And can you give us the amount of the increase, approximately or definitely?

A. About one hundred and fifty miles average increase, the average mileage operated.

Q. That is, there are about 150 miles, on an average, during the later period over the former period?

A. Yes, sir.

Q. Of comparison, as shown on the statement?

A. Yes, sir.

Mr. BUTLER: Complainant's Ex. 10 is offered in evidence.

Q. In keeping the accounts of your Company do you make any division of operating expenses between the passenger business and the freight business of the Company?

A. Yes, sir, we do.

Q. Can you explain to the Master the basis of such division?

A. The expenses incident to the handling of either passenger or freight, such as train service, engine service, station service and like service, is localized; that is, it is charged di-

rect to either passenger or freight, according to the service furnished. Such expense as is common to both passenger and freight, that cannot be charged to either, is divided between the two on the basis of the percents derived from train and car mileage, freight and passenger train mileage, and freight and passenger car mileage combined, and an average per cent used apportioning to the passenger its share and to the freight its share.

Q. Have you prepared from your records a statement showing the passenger revenue and the passenger proportion of operating expenses in the year ending April 30, 1908, and for the year ending April 30, 1907, and a like statement with respect to freight revenue and its proportion of operating expenses for the same periods, that there may be comparisons made?

A. Yes, sir; this statement also includes the taxes—which you didn't speak of.

Q. That is, you charged to each the passenger business and the freight business its just proportion of the taxes?

A. Yes, sir.

The MASTER: Do you refer to the gross-earnings tax, or to taxes generally?

Mr. BUTLER: Well, in Minnesota it is gross-earnings tax; in I think some of the other states on the road, it is on another basis, the direct or ad valorem basis.

WITNESS: The other two states, Iowa and South Dakota, are both on the ad valorem basis.

Q. And in such case how is the division made?

A. On the same basis of these percents which I have mentioned.

Q. Is the exhibit which is marked here Complainant's Ex. 11–Scott the statement to which reference was made in the last question and answer?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Q. And have you from the books and papers and records of your Company made a statement showing the total freight and passenger revenue and operating expenses and taxes for the year ending April 30, 1908, and year ending April 30, 1907?

A. Yes, sir.

Q. Have you that statement here?

Witness produces statement marked Complainant's Ex. 12–Scott.

Q. The witness is shown a paper marked Complainant's Ex. 13–Scott. Is that a statement made up by you from the records of the Company?

A. Yes, sir.

Q. Will you explain to the Master how it was made and what is intended to be shown thereon?

A. The first item on the statement represents the actual one-way intrastate tickets sold at the three-cent rate.

Q. During what period?

A. The year ending June 30, 1906. That is prior to the time that the two-cent rate went into effect. Applying the two-cent rate to such tickets that were sold for three cents would show a loss during that period of $72,453. We followed the same plan when it came to conductors' cash collections, excepting that, because of that being a small portion of the total cash passenger revenue, we didn't think it necessary to go through all of those reports for an entire year and draw off the strictly intrastate money on which to apply the two-cent, but we did do it for two months, went through the reports for the months of July, 1905, and January, 1906, drew off the intrastate collections made by conductors, and on that basis determined the per cent, what per cent that intrastate business for those two months bore to the total collections made by the conductors during those two months. The percent was 59. So we used that percent (59) into the total cash collections

made on trains by conductors during the year, which gave a result of $23,999.06, which we reduced to a two-cent basis; that is, deducted one-third; the amount was $7,999. Those two items will represent the amount that would have been lost during that period if the two-cent rate had been applied to all fares or all travel on a three-cent basis.

Mr. HOW: Wholly within the state.

WITNESS: Wholly within the state, intrastate business. The other items represent Minnesota's proportion of interstate travel, where we have reduced or arrived at the amount of the loss during that period by reducing both the three-cent and two-and-a-half-cent travel to a two-cent basis.

Mr. BUTLER: The statement Ex. 13 is offered in evidence.

Q. The conductors' fare is based upon taking two months, and making computation with respect to two months and establishing a percentage and applying that to the whole year?

A. To the collections for the whole year, yes.

Q. Are you able to state whether or not, as a matter of opinion, those two months were fairly representative of one-sixth of the year period?

A. We thought so; we took two months that we thought would be representative months for the period.

Q. The paper marked Complainant's Ex. 14–Scott is shown to the witness. Mr. Scott, will you explain to the Master what that exhibit is and what is intended to be shown by it and how it was made up? First, what period is covered by it?

A. The year July 1, 1905, to June 30, 1906. The statement is compiled to show the loss or losses that the Company would have sustained during that period had the new commodity rates been applied.

Q. And by the new commodity rates you mean the rates prescribed by the act of April 18, 1907?

A. Yes, sir,—the proposed commodity rate.

Q. The period covered is what year?

A. The year ended June 30, 1906.

Q. And the effect upon revenue derived from the transportation of each commodity mentioned on the statement, to-wit, soft coal, hard coal, lumber, wheat flour, coarse grain, flax and millet seeds, cattle and hogs?

A. Yes, sir.

Q. And does it also show, separately, the effect that such rates would have had upon the Minnesota intrastate traffic?

A. Yes, sir.

Q. As well as the Minnesota interstate business?

A. Yes, sir.

Q. And the other interstate business also?

A. Yes, sir.

Q. Now, how were these items gotten at? Let us speak first of the Minnesota intrastate business, and with respect to soft coal by way of illustration. How did you get at the loss that would have resulted during the period covered by that statement on soft coal?

A. According to the coal handled intrastate during that period.

Q. And how did you get at that, by what papers?

A. We got at it from the station records for the intrastate portion, and from the station records and records in our own office for the interline or interstate.

Q. Now, that is the first item under each one of these commodities, to-wit, Minnesota state traffic; you took the actual business which moved between stations in Minnesota and wholly within the state, and applied to the old business the new rate which is prescribed by the act of the legislature here in question?

A. Yes, sir.

Q. Now, with respect to Minnesota interstate and other interstate business, those computations were also made in your office?

A. Yes, sir.

Q. And upon what basis?

A. Upon the basis of the actual coal, lumber, etc., that was transported during this year.

Q. That is, you took the actual interstate business that was moved both in Minnesota and elsewhere, and what rate did you apply to that to get at these two kinds of interstate loss?

A. We applied the rates that were furnished by our traffic manager.

Q. That is Mr. Tittemore?

A. Yes, sir.

Q. That is, you took the interstate rates which he furnished you as being made necessary in case of the application of the local rate prescribed by the statute?

A. Yes, sir.

Q. And on that basis made the statement of loss for the year covered?

A. Yes, sir.

Q. And showing the percentage of loss of each kind, to-wit, the local, the Minnesota interstate and the other interstate?

A. Yes, sir.

Q. And then averaged the whole loss?

A. Yes, sir.

Mr. BUTLER: Ex. 14 is offered in evidence.

Q. Now, with respect to the effect of the commodity rates prescribed by the act of the legislature upon the revenues of the Company, was any further computation or examination made for any other or later period?

A. Yes, sir; we compiled the same information for the month of September, 1907.

Q. And from the same sources and in the same manner?

A. Yes, sir.

Q. And is the paper marked Complainant's Ex. 15–Scott

such statement with respect to the month of September, 1907?

A. Yes, sir.

Mr. BUTLER: Ex. 15 is offered in evidence.

Q. Complainant's Ex. 16 is shown to the witness. Will you explain, Mr. Scott, to the Master what Ex. 16 is and how it was made?

A. Ex. 16 is a statement showing the loss in revenues for the year ended March 31, 1907, by applying the class rates that went into effect November 15, 1906, for a period both prior to the date the rates went into effect and a period subsequent to the date they went into effect.

Q. That is, you applied the new rate to the old business and the old rate to the new business, to get at the loss?

A. The rates which became effective November 15, 1906, were applied to the business from April 1, 1906, to November 15, 1906, and from November 15, 1906, to March 1, 1907; the rates that were in effect prior to November 15th were applied to the business moved between those periods, in order to determine the loss in revenues during that one-year period.

Q. In this statement is any business covered excepting the business originating wholly in Minnesota and moving wholly within the state and terminating within this state?

A. It is intrastate business.

Q. And does the statement attempt to show any estimate of any loss on any interstate business that would be a consequence of the application of the rates in question?

A. No, sir; the statement was compiled from the way-bills.

Q. That is, you took the acual business that moved and applied the rates in the manner that you have already described to the Master?

A. Yes, sir.

Q. With respect to each particular class?

A. Yes, sir.

Mr. BUTLER: Ex. 16 is offered in evidence.

Q. And with respect to the effect on the revenue of the Company of the class rates which became effective November 15, 1906, did you make any further examination or computation or statement?

A. Yes, sir, for the month of October, 1907.

Q. And was that a statement showing the same thing for the month as Ex. 16 showed for the period covered by it?

A. That is a portion of the period. That is the period of November 15th on into the month of October, 1907, we applied the rates that were in effect prior to November 15, 1906.

Q. That is, you applied the old rates to the actual business of the month of October, 1907, and estimated the loss that way?

A. Yes, sir.

Q. Upon each class?

A. Yes, sir.

Q. These statements also show the tonnage and the average miles hauled, do they not?

A. Yes, sir.

Q. And that was taken from the actual business of the company?

A. Yes, sir.

Mr. BUTLER: Ex. 17 is offered in evidence.

By Mr. O'BRIEN:

Q. Has the data from which these tables have been prepared been preserved?

A. Yes, sir.

Q. So that we can check it over from your original data?

A. Yes, sir.

Q. You will preserve it, will you, until we have an opportunity of doing so?

A. Yes, sir, we will.

By Mr. BUTLER:

Q. Certain of the statements which you have heretofore

produced and which have been received in evidence, made comparisons for the year ending April 30, 1908, with the preceding year. Have you made any statement of comparison of the income account of the Company, in summary form, comparing the months of May and June, 1907, with the same months of 1908?

A. Yes, sir.

Q. Have you such statements with you?

Witness produces statement marked Complainant's Ex. 18-Scott.

Q. Will you explain to the Master this Complainant's Ex. 18?

A. The statement covers results for the entire mileage operated, showing the gross revenues for the two months May and June, 1908, compared with May and June, 1907. The figures in the extreme right-hand column in black show increases and in red, decreases; and the statement will show the gross revenues, the operating expenses and taxes, the net revenue from operation, (to which is added other income) making a total net income from all sources, and from which is deducted the interest on bonds.

Q. Now, with respect to the gross revenue for the two months in question, was there an increase or a decrease in 1908, over the same period in 1907?

A. The gross revenues decreased for the two months of 1908 compared with the two months of 1907, $131,045.96.

Q. And how about the operating expenses and taxes, considered together?

A. Show an increase of $48,426.98.

Q. And the result of the comparison on net revenue is what?

A. A decrease for the two months this year compared with those of last of $174,195.80.

Q. Then you have under "other income"; what do you

mean by that income derived from other sources than operation?

A. Other sources than such collections as are classed as revenues; for instance, rentals, where we lease a portion of our property, give other lines trackage rights, and also where we lease the lines of other properties and we pay for the trackage rights. That is the rental portion only of such expense; this is the net income. That is, we collected or had an income from that source in excess of the amounts we paid out, in the net of the same kind, of $37,000; that is, the receipts exceeded the payments $37,000 for the two months.

Q. Then, on your total net income from all sources, this indicates a loss of $174,195.80 for May and June, 1908, as compared with the same months of 1907?

A. Yes, sir.

Q. And the subsequent items take in the interest on bonds that are chargeable to the revenues of that period?

A. Yes, sir.

Q. Well, will you explain what is meant by the "Surplus" and "Deficit" as indicated there?

A. For the two months of 1908 the net results for the month were a loss after including the interest on bonds.

Q. That is to say, you show an interest deficit of $85,477.97 for May and June, 1908?

A. And for the two months of 1907 we had a surplus.

Q. Of ninety—

A. $90,906.17. On a comparison of the two months of this year with the two months of last year making a decrease of $176,384.14.

The MASTER: Did I understand you to say this was over the whole system?

WITNESS: The entire system, yes, sir. It can be furnished by states if so wished, but when this was compiled we didn't have it by states. We will have it in a week or so. The divi-

sion by states comes later than the closing of the results for the month proper.

Q. And, Mr. Scott, have you any statement of approximation of the gross earnings of the Company, down to the end of July last past, with you?

A. No, sir, I have not.

Q. Is that it?

A. This is a statement of our approximated gross revenues for the month of July as compared with July of 1907.

Q. It is an approximation, the returns are not finally checked, is that what I understand?

A. For July, 1908.

Q. Yes.

A. July, 1907, are actual.

Q. Yes, and July, 1908, are your first reports, there not having been time enough to check and verify them all, and it is an approximation?

A. Yes, sir.

Q. I want to get at the degree of accuracy of the statement.

A. It is an approximation of our revenues. It is a statement that we get out every month; in fact we get out the information daily.

Q. And do the approximations, as a rule, substantially correspond with the actuals as they come in later?

A. Usually quite close, yes.

The MASTER: What is the basis of your approximation?

WITNESS: Information we get from the agents, all along the line, of the business they receive on that day and the passenger ticket sales for that day. They make a statement showing the freight received at their station in revenue on that day and the ticket sales that they make; to which, of course, are added the cash collections of any special trains. It is as close as we can get at it approximately.

Q. That is before the official and detailed returns come in

by ordinary course to you?

A. Yes, sir. The suggestion has been made, regarding these reports we get from the agents, that it is a daily report that we receive from them. This is true.

Q. (Complainant's Ex. 19–Scott shown witness.) Will you explain to the Master what that statement is? That is the statement to which you have last referred in your description?

A. Yes, sir.

Mr. BUTLER: It is offered in evidence.

Mr. O'BRIEN: It is objected to as incompetent and no foundation laid.

Q. That statement, as I understand, is one that is made up regularly at the end of each week and each month, in your regular course of business, as an approximation?

A. Yes, sir.

Q. To furnish a basis of comparison. It is not claimed that it is actual, but the actual figures will be in, in ordinary course, from the agents?

A. Yes, sir.

Mr. BUTLER: I suppose it may be arranged that the railroad map of the state be considered in evidence in these cases?

Mr. O'BRIEN: I suppose so.

Mr. BUTLER: If it may be considered that the latest official railroad map of the state, prepared under the direction of the Railroad and Warehouse Commission of the state, be in evidence, I think that will be sufficient and the map may be used as if really included in the record. The date is May 1, 1908.

The MASTER: It is really an official record; and what is produced is a copy of it for use in the case and to be considered as part of the evidence in the case without formal introduction?

Mr. BUTLER: Yes.

The MASTER: That is satisfactory, is it, gentlemen?

Mr. O'BRIEN: Yes.

Adjourned until the morning of August 5th.

FEDERAL BUILDING, Wednesday, August 5, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,
Recalled as a witness, testified.

CROSS-EXAMINATION,

By Mr. O'BRIEN:

Q. Mr. Scott, I call your attention to Ex. 4. The Minnesota Transfer Railway Company is mentioned there as a company in which the Minneapolis & St. Louis road owns some of the stock and bonds?

A. Yes, sir.

Q. That is an independent company, is it not,— the Minnesota Transfer Company?

A. So I understand.

Q. The Minneapolis & St. Louis owns none of the actual property?

A. Not in its own name direct, no, sir.

Q. It is a stockholder in the Minnesota Transfer Company?

A. Yes, sir.

Q. And owns how much of the stock of that Transfer Company?

A. One-tenth, is my recollection.

Q. And how much is that?

A. I don't believe I have that.

Q. $7,000 is it not? look at the fourth page of Ex. 7.

A. That is what that exhibit shows—$7,000.

Q. Well, that exhibit is correct, is it not?

A. Supposed to be, yes, sir.

Q. And the Minneapolis & St. Louis Railway Company owns of the bonds of the Transfer Company $144,000?

A. Yes, sir.

Q. Were those bonds and stocks purchased at the same time?

A. Not all of them, at least; some of them may have been.

Q. How much was paid for the stock,—or was it given as a bonus upon the purchase of the bonds?

A. I couldn't answer that question.

Q. You don't know that?

A. No.

Q. Do the records of the Company show?

A. I presume they would.

Q. Will you please ascertain that?

A. Yes, sir.

Q. Have dividends been paid on account of the stock of the Minnesota Transfer Company?

A. No, sir.

Q. No dividends ever paid on account of that stock?

A. No, sir.

Q. What rate of interest do the bonds bear?

A. I think it is 4 per cent.

Q. The St. Paul Union Depot Company, mentioned in Ex. 4, is also an independent corporation, is is not?

A. Yes, sir.

Q. And the interest of the Minneapolis & St. Louis in that company consists of its ownership of the capital stock, of the par value of $103,600?

A. Yes, sir.

Q. Dividends have been paid on account of that stock?

A. Yes, sir.

Q. At what rate?

A. 4 per cent.

Q. The railway Transfer Company of Minneapolis is also an independent corporation, is it?

A. Yes, sir.

Q. And the Minneapolis & St. Louis owns $299,500 par value of the stock of that company?

A. Yes, sir.

Q. The par value of the entire stock of the company is how much?

A. $300,000.

Q. And who is the owner of the five shares not owned by the Railway Company?

A. In the names of several persons.

Q. For the purpose of having a board of directors, is it,—simply to qualify those persons as directors?

A. Why, I presume so.

Q. All of those persons are officers of the Minneapolis & Louis Railway Company?

A. They are.

Q. So that these five shares of stock are placed in their names for convenience?

A. I guess that is right.

Q. Did the Minneapolis & St. Louis Railway Company pay anything for the stock of the Railway Transfer Company?

A. I could not answer that question, either, without reference to the records.

Q. Will you please examine the records and ascertain whether anything was paid for it?

Witness makes memorandum of request.

Q. The Railway Transfer Company operates in Minneapolis, does it?

A. Yes, sir.

Q. Does it own any tracks or right-of-way or yards?

A. I think not.

Q. Has it the use of any tracks?

A. Yes, sir.

Q. What tracks has it the use of?

A. The tracks within certain limits that that company operates; I could not describe them off-hand.

Q. Well, they are tracks of the Minneapolis & St. Louis Railway Company, are they not?

A. Owned by the Minneapolis & St. Louis Railway Company, yes, sir.

Q. Has the Transfer Company the exclusive use of those tracks?

A. Yes, sir.

Q. To the exclusion of the Minneapolis & St. Louis Railway Company?

A. Yes, sir.

Q. Do you mean that the Minneapolis & St. Louis Company does not use the tracks at all?

A. That is my understanding.

Q. And the Transfer Company operates those tracks under a lease from the Minneapolis & St. Louis Company, does it?

A. Yes, sir.

Q. Has the Transfer Company any equipment of its own?

A. They may have some; I wouldn't say yes or no to that.

Q. If it has any equipment, it is very small?

A. It would be.

Q. Does it lease equipment from the Minneapolis & St. Louis Railway Company?

A. It does.

Q. Will you please furnish us with a list of the equipment that it leases from the Company and any equipment it owns?

Witness makes note of the request.

Q. As a part of that equipment that it leases from the Minneapolis & St. Louis Company are some locomotives, are there not?

A. Yes, sir.

Q. Are those locomotives included in the 79 locomotives owned by the Company appearing later on Ex. 4?

A. I don't think they are, but I would have to refer to the records to answer that question.

Q. Will you please determine that? And also determine that with regard to the other equipment described on Ex. 4,

whether any portion of that is leased to the Transfer Company.

Witness makes note of request.

Q. So far as you are able to state now, then, the Transfer Company has no property except the rights it has under the lease or leases from the Minneapolis & St. Louis Railway Company?

A. I think that is correct.

Q. Are you an officer of the Railway Transfer Company?

A. Yes, sir.

Q. What office do you hold in that company?

A. Secretary.

Q. Where are the books of the company kept?

A. In Minneapolis.

Q. In your office?

A. No, sir, only the records of the secretary are kept in my office.

Q. Those books are open to the inspection of the representatives of the State the same as the books of the Railway Company, I presume, are they not?

A. Yes, sir.

Q. And where are the other books kept?

A. In the office of the Transfer Company, located in the yards.

Q. Have any dividends ever been paid upon the stock of the Minneapolis Transfer Company?

A. Why, I think that there have been some payments, (there is a difference of opinion there) there have been some payments made; as to whether they would be classed as dividends or returns for other uses might be a question. I should think that they could be so considered.

Q. We would like to have a statement of all payments which have been made by the Transfer Company to the Minneapolis & St. Louis Company within, say, the past five years.

Witness makes note of request.

A. Now, you mentioned [illegible] whether of a rental nature, or payments of any nature.

Q. Yes.

A. All right, sir.

Q. Will you please state the object and purpose of the Railway Transfer Company of Minneapolis?

A. It is classed as a switching line entirely. The entire revenue is derived from the switching of cars.

Q. Well, switching [illegible] the tracks of the Minneapolis & St. Louis Railway [illegible] other railways?

A. Over their own [illegible] between different properties, railways and elevators, and the switching of all nature for anybody.

Q. That is what I wanted to know, whether this switching was done exclusively upon the tracks owned or operated by the Minneapolis & St. Louis Railway Company, or whether it included switching between that company and other railway companies.

A. Why, it would include both. For instance, if we have cars that are to be delivered to another line in Minneapolis that we cannot reach [illegible] direct, that car will have to pass through or over the Transfer Company's tracks, why they will switch that car [illegible].

Q. But that is not the case where the switching is between different portions of the line operated by the Minneapolis & St. Louis Company?

A. No.

Q. I thought I understood you to say that this company did the work of switching between different lines or different tracks operated by the Minneapolis & St. Louis Company.

A. No, you misunderstood me, then, or I misunderstood your question. The Minneapolis & St. Louis do their own switching between their own [illegible], you know; the Railway Transfer Company does not switch [illegible] excepting that for which

there are tariffs to cover and for which they receive pay,—if that answers the question.

Q. Well, I wanted to know where they did their switching.

A. Between all points that those transfer tracks reach; wherever they can serve another road or an industry.

Q. It is only in case where a car is being taken from the tracks operated by the Minneapolis & St. Louis and switched to a track operated by some other company, or from the tracks operated by some other company to the tracks operated by the Minneapolis & St. Louis?

A. It covers such switching.

Q. Does it cover any other form of switching?

A. It could.

Q. Well, what other kind?

A. Switching of a car that is to be delivered to some mill or some industry that their tracks reach. It is all switching, you know, where their tracks must be used.

Q. You mean switching cars to industries that are upon spur tracks connecting with the Minneapolis & St. Louis?

A. No, sir; the Minneapolis & St. Louis do that switching themselves. They have their own switching crews.

Q. Then no cars are transferred to the Transfer Company or taken by that Company from the Minneapolis & St. Louis except cars that are going to leave the tracks operated by that company?

A. Yes, sir.

Q. So far as any switching is concerned upon tracks operated by that company, either private tracks to private industries, or different tracks of the system, that is all done by the Minneapolis & St. Louis Company itself?

A. Yes, sir.

Q. In Ex. 4 you have apportioned the rolling stock between the different states; first, on the basis of locomotive and car mileage, have you?

A. Yes, sir.

Q. Now, what do you mean by locomotive and car mileage?

A. The number of miles made by locomotives in performing service and the number of car miles, the mileage made by the cars in trains.

Q. Are locomotive mileage and train mileage synonomous terms?

A. No, sir; although the two would be very close together, so far as the total is concerned; but locomotive mileage would not mean train mileage, because a locomotive very frequently must go from the roundhouse or where it is housed to where it picks up its train. In some cases that may be quite a little distance.

Q. You added the locomotive and car mileage?

A. Yes, sir.

Q. And then found the average from that?

A. Yes, sir.

Q. By what means?

A. By taking the mileage made within Minnesota. Whatever percentage that bore to the total, that percentage was applied in the total equipment as shown.

Q. So far as your locomotives are concerned, they remain upon the same division of the road, do they?

A. Not always.

Q. Each locomotive?

A. Not always.

Q. Generally?

A. Generally they do.

Q. What are the division points upon the road?

A. Albert Lea, Fort Dodge, Des Moines and Winthrop; of course, St. Paul and Minneapolis; and Watertown, Storm Lake.

Q. There are some of these locomotives that remain in the state of Minnesota permanently, are there not?

A. They move them around considerably. A locomotive that, we will say, is on the division out west that is in need of general overhauling will haul a train into the terminal where the repairs are made, and another locomotive that would be here would have to haul it out there and take its place. They move them around considerably.

Q. But it is true, that, as a general thing, a locomotive remains in one division, is it not?

A. It will run in a certain service for a certain length of time; that is, until it needs repairs, usually, but it depends upon the business that is moving; they have got to move their locomotives around.

Q. Are you able to state how many locomotives are confined in their operation to the state of Minnesota?

A. This table endeavors to show that information. I know of no other way you could get at it except that.

Q. The Minneapolis & St. Louis Railway Company begins in this state at Minneapolis, does it not?

A. Within Minneapolis; that is, the owned mileage.

Q. And where does the first division of that road end?

A. On the line south would be at Albert Lea.

Q. And the line west?

A. At Winthrop.

Q. Both of those points are in Minnesota?

A. Yes, sir.

Q. Now, are there not a certain number of locomotives assigned to each of those divisions?

A. I don't think so. I am not an operating man, but I don't see how they could do such a thing.

Q. Then, the line south, the second division commences at Albert Lea and ends where?

A. Freight would be at Fort Dodge.

Q. And passenger?

A. Des Moines; that is, by the use of leased lines, from An-

gus to Des Moines. The passenger-runs are from St. Paul through to Des Moines; no terminals in between so far as passenger-runs are concerned.

Q. Now, do you know whether or not there are a certain number of locomotives assigned to that division?

A. Which division do you mean now?

Q. The division from Albert Lea to Des Moines.

A. No, I couldn't say.

Q. And from Albert Lea to Fort Dodge?

A. No, sir.

Q. You couldn't tell about that?

A. I couldn't say positively, but my opinion is that there are not any assigned.

Q. And that is true with regard to each of the divisions; you don't know whether there are certain locomotives assigned to those divisions or not?

A. No, sir.

Q. If there are a certain number of locomotives assigned, which in practice do, as a usual thing, remain upon the same division, this method of computation adopted by you in Ex. 4 for the purpose of ascertaining the proportion of the equipment which should be charged to Minnesota property is erroneous, is it not?

A. If that were true, but each division needs a certain number of locomotives and has a certain number of locomotives, and the day of assignment is past. They used to handle them that way, but they don't now. A locomotive is moved from point to point as it is needed, according to the movement of the service. That is my general understanding of railroading. Now, I may be wrong.

Q. You said that you didn't know whether that was done or not.

A. I am not an operating man; I am only just giving you my general understanding of railroading. Formerly they did

assign locomotives to divisions.

Q. I now call your attention to Ex. 5. Will you please explain what Ex. 5 is, Mr. Scott?

A. It is a statement of the funded debt of the Minneapolis & St. Louis Railroad Company on April 30, 1908, and the apportionment of that debt among the states through which the road owns mileage. You will note some of the mortgages are upon property entirely within the state of Minnesota. One of them is upon property entirely within the state of Iowa. There are three of them where the mortgages extend over in other states; one of them within Minnesota and Iowa, and two of them cover mileage of the three states. Now, the mileage where it is (you might say) interstate, is apportioned among the states on a basis of the road mileage—the track mileage, in other words.

Q. Is each mortgage mentioned in Ex. 5 a separate mortgage?

A. Yes, sir.

Q. I call your attention to the first; Minneapolis, to Merriam Junction, Minnesota, 7 per cent, $1,800. What is the date of that mortgage?

A. That mortgage became payable on January 1, 1907, and it amounted to $455,000. There is still unpresented on the mortgage $1,800; that is, the owners of that amount have not yet cashed in what is due them.

Q. Was the remaining portion of the mortgage paid in cash?

A. Yes, sir.

Q. And the cash was obtained where?

A. By a re-issue of a like amount, dollar for dollar, of the 4 per cent mortgage first and refunding. They took up the 7 per cent mortgage by the issuance of a 4 per cent mortgage for a similar amount. I have the exact amount that was retired.

Q. The first and refunding mortgage is on the entire line?

A. Yes, sir. Understand me, that they didn't exchange mortgages, it was paid in cash.

Q. I understand you sold bonds secured by the first and refunding mortgage?

A. They issued bonds; they may not have been sold yet.

Q. You say you paid the old bonds in cash?

A. Yes, sir.

Q. And you got that cash from bonds of the first and refunding mortgage which were sold?

A. Well, we have some bonds in the treasury. The particular bonds that were exchanged here may not have been sold.

Q. Well, were they exchanged for the other bonds, or were they sold and the cash used to retire the old bonds?

A. They were not exchanged, but the amount paid was funded.

Q. What do you mean by funded?

A. New bonds of the first and refunding issue, for a like amount, were issued to cover.

Q. Weren't they sold then?

A. Well, they may or may not have been; there are some bonds still in the treasury.

Q. Well, do you know where you got the cash with which you retired those other bonds?

A. We have a bills-payable account of $620,000; possibly some of it was derived from that source.

Q. Then you don't mean to say that any of the first and refunding bonds were used for the purpose of retiring the 7 per cent bonds that you have mentioned?

A. Not as an actual transaction. That is, these bonds were not sold right at the same time that the others were paid. It is not always good policy to do so; the market conditions are not favorable, always, to borrow money.

Q. But, at any rate, of that first mortgage there are still outstanding $1,800?

A. Yes, sir.

Q. And do you know who holds those bonds?

A. No, sir, but I presume the Trust Company would know.

Q. Now, the second mortgage is Merriam Junction to Albert Lea, $950,000. Do you know the date of the mortgage securing those bonds?

A. February 1, 1877.

Q. And what was the total issue on account of those bonds?

A. $950,000.

Q. When do they become due?

A. June 1, 1927.

Q. That was the mortgage which it was attempted to pay off in the receivership proceedings, was it not, and the bondholders resisted and insisted on the mortgage remaining?

A. I know it did remain, but as to the exact details of the arrangement I am not familiar. I know that the mortgage was assumed by the present Company, it continued.

Q. What portion of the railway is covered by that mortgage?

A. From Merriam Junction or "Merriam" (which is the correct name now) to Albert Lea, Minnesota, both points within Minnesota.

Q. How much of the first bonds ($1,800) did you assign to Minnesota in Ex. 5?

A. All of it.

Q. And of the second mortgage?

A. The entire amount.

Q. The third mortgage, Iowa Extension, Albert Lea to Fort Dodge, $1,015,000.

A. You mean assigned to Minnesota?

Q. No, I ask you what portion of the line that covers.

A. From Albert Lea, Minnesota, to Fort Dodge, Iowa.

Q. And of that mortgage you have charged to Minnesota $126,165?

A. Yes, sir.

Q. The next mortgage, Fort Dodge to Angus, is upon property between Fort Dodge and Angus?

A. Yes, sir.

Q. That is exclusively upon Iowa property?

A. Yes, sir.

Q. And you have assigned no portion of that property to Minnesota?

A. No, sir.

Q. The next, Pacific Extension, Hopkins to Morton, covers property exclusively within Minnesota?

A. Yes, sir.

Q. And all of that has been charged, in this tabulation, to Minnesota?

A. Yes, sir.

Q. First Consolidated mortgage; will you please give the date of that mortgage?

A. November 2, 1894.

Q. Was that before or after the reorganization?

A. Right at the time.

Q. As a part of the reorganization plan?

A. Yes, sir.

Q. And that mortgage is on the entire line, is it?

A. Yes, sir.

Q. Bears 5 per cent interest, and bonds have been issued pursuant to it to the amount of $5,282,000?

A. Yes, sir.

Q. Of which in this calculation you have assigned $3,174,482 to Minnesota?

A. Yes, sir.

Q. Were all of those bonds issued at the time of the reorganization?

A. Yes, sir. I might state that since that time the line has been extended in Iowa, but of course in this table we have as-

signed to Iowa on the basis of the additional mileage; that is, this is not apportioned on the basis of the mileage of the road at the time the bonds were issued.

Q. But the present mileage?

A. The present mileage; but I say since this particular issue the road has been extended in Iowa a good many miles but we have added to Iowa's proportion including that mileage.

Q. Do I understand you to say that this computation was made upon the mileage of the road as it existed on April 30, 1908?

A. Yes, sir.

A. And not upon the mileage as it existed at the time of the execution of the mortgage?

A. Yes, sir.

Q. What is the date of the first and refunding mortgage bearing 4 per cent interest?

A. March 1, 1899.

Q. And under that mortgage bonds have been issued to the amount of $10,745,000?

A. Up to April 30, yes, sir.

Q. Of which $6,457,745 have been assigned to Minnesota in this computation?

A. Yes, sir.

Q. Now, that constitutes the total funded debt of the Minneapolis & St. Louis Railway Company, does it not?

A. On April 30th, yes, sir.

Q. And its capital stock amounts to how much at par value?

A. $10,000,000.

Q. Of which how much is preferred stock?

A. $4,000,000.

Q. And $6,000,000 common stock?

A. Yes, sir.

Q. Is that the total authorized capital stock?

A. Yes, sir.

Q. Will you please let us have a statement showing the payments and the sources from which the payments were made upon the first mortgage since it became due, the mortgage described here as "Minneapolis to Merriam Junction"?

A. That is, the amount? I can give you the amount.

Q. No, the dates of payments and the sources from which they were made.

Mr. DURMENT: A detailed statement, from which we can tell ourselves when they were paid and what sums were paid, whether they were paid with other bonds, whether they were paid from cash, and if cash or bonds how much and out of what fund of the Company they came.

Witness notes request.

Q. Ex. 6, Mr. Scott, is the same as Ex. 5, except that the division or apportionment of the bonds between Minnesota and other states is made on the basis of gross earnings?

A. Only so far as the two issues, the first consolidated and the first and refunding,—the two issues that cover the entire property.

Q. Yes.

A. The others are divided, are apportioned on the same basis as in Ex. 5.

Q. Because those mortgages are exclusively in either one of the other states?

A. Yes.

Q. But where there is any division or apportionment made, it is made on the gross earnings rather than on the mileage?

A. Yes, sir.

Q. Now, I call your attention to Ex. 7. Ex. 7 purports to be a statement of the cost of property and investments of the Minneapolis & St. Louis Railway Company to April 30, 1908, does it?

A. Yes, sir.

Q. You mean the cost as it appears upon the books of the Company?

A. Yes, sir.

Q. You don't mean an actual cost in cash?

A. No, sir.

Q. But you do mean the amount shown upon the books of the Company?

A. Yes, sir.

Q. Now, the first item in this statement Ex. 7 is cost of property to Minneapolis & St. Louis Railway as reorganized November 2, 1894, $22,499,557.36?

A. Yes, sir.

Q. And that item represents what?

A. The items appearing on that first sheet of the exhibit.

Q. And the items on the first page show the total capital stock, the total funded or bonded indebtedness of the Company immediately after the reorganization, the total expenses of reorganization, and certain additions made immediately after the reorganization, do they not?

A. Yes, sir.

Q. When was the Minneapolis & St. Louis Railroad Company first organized?

A. November, 1894.

Q. You are talking of when it was reorganized?

A. That is the Railway company. You said Railroad company.

Q. What was the name of the Company that failed?

A. The Minneapolis & St. Louis Railway Company was the—

Q. I am speaking now of the original company. When was it first organized?

A. It dates back—I couldn't give you the exact date—back to the 1850's, if I remember correctly, the first incorporation; 1857, along in there somewhere.

Q. Well, have you the original charter granted to the Company?

A. No, sir, not in my files.

Q. Do you know where it can be found?

A. No, I do not. I may possibly have it, I am not sure.

Q. Will you ascertain?

A. Yes, sir.

Q. When was construction commenced?

A. You mean the additional property?

Q. Oh, no, I mean of the original road.

A. The Minneapolis & St. Louis Railway Company was a company that at the time it was organized consisted of several smaller—a consolidation of several small properties, about four of them. Now, in that first answer I gave you I went back to my recollection of one of the very oldest of those four, but the Minneapolis & St. Louis Company is a company that was composed, to start with, of a consolidation of three or four small properties, and it would be at a later date than in the 1850's.

Q. When was the Minneapolis & St. Louis Railway Company organized?

A. I haven't that information.

Q. When it was organized it absorbed or consolidated, you say, three or four smaller railroad companies?

A. Yes, sir.

Q. But you are unable to give us even approximately the date when the Minneapolis & St. Louis Railway Company was organized?

A. Yes, sir, I cannot.

Q. You will ascertain that, Mr. Scott?

A. Yes, sir.

Q. You have not in your possession the charter of the Minneapolis & St. Louis Railway Company?

A. I may have that; I wouldn't say positively that I have not.

Q. Are you able to state what the amount of its authorized capital stock was?

A. $10,000,000. I can state that.

Q. As it was originally organized?

A. Yes, sir.

Q. Was that stock all issued at the time the Company went into the hands of a receiver?

A. Yes, sir.

Q. What was the date at which the Company went into the hands of a receiver?

A. They defaulted in their interest that was due January 1, 1888, and in June, 1888, a receiver was appointed.

Q. By the district court of Hennepin county?

A. I presume so. I don't know as to that.

Q. And the Company remained in the hands of a receiver until it was reorganized in 1894?

A. Yes, sir.

Q. Now, how much, if anything, had been paid to the Company up to the time of the appointment of the receiver on account of the ten million of capital stock issued by it?

A. Which company?

Q. The Minneapolis & St. Louis Railway Company.

A. As to how that stock was issued, on what basis?

Q. No, no, how much had been paid in cash to the Minneapolis & St. Louis Railway Company.

A. I don't know.

Q. For or on account of its capital stock?

A. I don't know.

Q. Will your books show that?

A. I don't think so.

Q. Will your books show the payment of anything on ac-

ount of that stock, any statement of such an account of that ind?

A. I don't know whether any exist or not. You see these re old books and I haven't taken occasion to get into them.

Q. You have those books in your possession?

A. Yes, sir.

Q. As the Comptroller of the road you have possession ssentially of all of the records that Company, have you not?

A. Yes, sir.

Q. Will you please examine the books and records of the Company and state whether or not any such sum paid on ac- ount of the capital stock of the Minneapolis & St. Louis Rail- way Company?

A. Yes, sir.

Q. At the time of the appointment of a receiver in 1877, what was the funded or bonded debt of the Minneapolis & St. Louis Railway Company?

A. $9,213,000.

Q. Was there any floating indebtedness at that time?

A. I can't answer that, without reference to the books; I presume there was.

Q. Will you find that out and let us know?

Witness notes request.

Q. That indebtedness, you stated, amounted to $9,213,- 000, consisted of what?

A. Quite a number of items. I can tell them off to you.

Q. I wish you would.

A. One of them is described as the Southwestern Ex- tension, $[illegible], the Minneapolis & Sheldon Junction, $[illegible]- 000; the Morgan Division and Other Lien, $[illegible]; the Iowa Extension, $[illegible]; the Iowa Extension, $1,282,000; the Minneapolis & [illegible], $[illegible]; Consolidated Bonds, $[illegible]; Real Estate Notes, $[illegible]; Income Mortgage Bonds, $[illegible]; Improvement and Equipment Bonds, $3,- [illegible], making a total of $9,213,000.

Q. You said consolidated mortgage bonds, did you not?

A. Consolidated bonds.

Q. Should not that have been construction mortgage bonds?

A. The $795,000? No, sir. That would not appear on that sheet in detail. All the first five issues are on that list because they are still in existence. The others were retired and paid by the reorganization committee.

Q. Have you a copy of the plan of reorganization of 1894?

A. I have one copy.

Q. Is it here?

A. Not here, no, sir.

Q. Will you produce it?

A. If more than one copy of that is desired I shall have to make them.

Q. Well, it may be that we can have it printed ourselves.

A. It is not a very large document.

Q. In Ex. 7 it appears that under the reorganization plan the reorganized company, the Minneapolis & St. Louis Railroad Company, assumed certain bonds which had been issued by the Railway Company.

A. Yes, sir.

Q. Amongst those were the bonds known as the Minneapolis & Merriam Junction bonds, $455,000?

A. Yes, sir.

Q. Was that the total number of bonds issued under that mortgage?

A. Yes, sir.

Q. And those bonds produced how much cash?

A. I don't know. That would be a record back on the books of the old company.

Q. You have those?

A. Yes, sir.

Q. And that is true with regard to each of these other mort-

gages assumed, is it not?

A. Yes, sir.

Q. Will you please prepare us a statement showing the total net cash received by the Minneapolis & St. Louis Railway Company upon each series of bonds issued by it?

A. I will see if the records show it.

Q. In the first item on Ex. 7 it is stated that the first preferred stock, $2,500,000, was retired by issuance of first and refunding bonds, in June, 1899. Will you please explain that transaction?

A. Bonds were issued for a like amount—$2,500,000—of the first and refunding bonds to retire that first preferred stock.

Q. Under the reorganization plan there were three classes of stock, were there?

A. Yes, sir.

Q. The first preferred stock, the second preferred stock and common stock?

A. Yes, sir.

Q. And the first preferred amounted to $2,500,000?

A. Yes, sir.

Q. And the second preferred to how much?

A. $4,000,000.

Q. And the common stock?

A. $6,000,000.

Q. So that, immediately after the reorganization, the capital stock amounted to $12,500,000, did it not?

A. Yes, sir.

Q. And the first preferred stock was retired by the substitution of bonds of a like amount?

A. Yes, sir.

Q. There is an item on this first page "discount on first preferred stock, $133,185.50." What is that?

A. I don't know whether that refers to the old first preferred or the new; I guess it must have been the old, however.

Q. Well, if it was the old, what does it mean?

A. It means that there was that much less realized than par, I think.

Q. Well, you really don't know what it means, do you?

A. No, I would have to look up the entry.

Q. You will look that up, will you?

A. Certainly.

Q. "Discount on first consolidated mortgage bonds, $500,000." What does that mean?

A. That means that when those bonds were sold they realized that much less than par.

Q. When were those bonds sold?

A. They were sold by the reorganization committee.

Q. That discount is included in the item of $22,499,557.36?

A. Yes, sir.

Q. Going to make up the total cost under the reorganization?

A. Yes, sir.

Q. To what amount were the first consolidated bonds issued at the time of and as a part of the reorganization?

A. $5,282,000.

Q. The total amount of those bonds as they exist now—

A. Yes, sir.

Q. —were issued as a part of the reorganization?

A. Yes, sir. I will correct that statement to read $5,000,000 instead of $5,282,000.

Q. Those bonds were then issued at 90 cents?

A. Yes, sir; the discount shown here, $500,000. It was $5,000,000 that was issued.

Q. Five millions that were issued at the time of the reorganization?

A. Yes, sir.

Q. The balance, $282,000, was issued subsequently to the reorganization?

A. Yes, sir.

Q. And is included in the last series of items appearing on this first page?

A. Yes, sir.

Q. The next item is a credit "less discount on bonds used in purchase of Pacific Division which has been charged to cost of Pacific Division, $281,947.06." What does that mean?

A. I think they had that discount confused in some way as between those two properties.

Q. You should not have given this credit?

A. I think not.

Q. Well, I was a little surprised that you did. That ought to be added, according to your theory, oughtn't it?

A. The last page of that exhibit will give you the complete discounts on all the issues.

Q. It is safe to assume that no credit should be given under any circumstances, Mr. Scott?

A. I will make this statement, that the discount here shown as $218,052.94 and as it appears on the second sheet $281,947.06, will represent the correct discount.

By Mr. DURMENT:

Q. Who made up this statement, Ex. 7,—you?

A. It was under my instruction. Of course I did not make up all these exhibits personally.

Q. But it was made by your employes, that is, by the men under you, and according to your directions, wasn't it?

A. Yes, sir. But, as I say, the two amounts shown—the $281,000 and the $218,000—will make the full $500,000, and it is all shown; in other words, if you increase the discount here $500,000 on one page, the other will have to be increased correspondingly.

Q. Yes, but this statement on page 1 purports to have been made as of November 2, 1894, and this other transaction on the next page did not take place until 1899?

A. The amount is confused in some way.

By Mr. O'BRIEN:

Q. Now, the next item "amount of coupon No. 60, Minneapolis and Merriam Junction bonds, $15,925," what is that?

A. That is a coupon of that issue that had to be paid.

Q. Didn't they all have to be paid?

A. That could not be properly charged to interest.

Q. Why not?

A. Because of the nature of the item.

Q. Well, if it was a coupon on one of those bonds, it must have been part of the interest?

A. But the bond was not issued really until six months after the date. In other words, the coupons on that particular bond did not correspond with the six-months' period. It was a peculiar issue back there at that time, the nature of it was such that this coupon when paid could not be charged to interest.

Q. Who was the owner of that bond?

A. Well, there must have been a good many owners of the full issue "coupon No. 60."

Q. That was the coupon number, not the bond number?

A. Yes, sir.

Q. Those were not coupons that were tied up by some litigation there, were they?

A. They may have been, I don't know.

Mr. SEEVERS: Is that the issue of bonds upon which the coupons represented interest six months after the bonds became due?

WITNESS: Yes, sir.

Q. Do you mean that there was an extra coupon attached to the bond, that there was an error in the number of coupons and there was a coupon coming due six months after the bond became due?

A. Yes, sir.

Mr. O'BRIEN: Well, Mr. Seevers, you are mistaken, then. (To the witness). If you will look that up, Mr. Scott.

WITNESS: It was one coupon in excess of the period for which the bond covered.

Q. Well, that is what I thought, that was what I asked. There was an extra coupon attached to the bonds, you say?

A. Well, not exactly; there were 60 coupons that would have to be for bonds of that length of time to even up.

Q. Thirty years?

A. Thirty years, but one of those coupons fell due six months after the bond fell due. The bond fell due January 1, 1907, and the other coupon was the next one, issued back at the time of the reorganization—they were all issued at the time of the reorganization, but by that reorganization committee; for some reason that additional coupon was attached.

Q. None of these bonds were issued by the reorganization committee, were they? This is a coupon of the Minneapolis & Merriam Junction bonds that was issued by the old company?

A. Assumed by them, assumed by the reorganization committee in fact.

Q. The next item is "net expense of reorganization, $502,314.27." That is the amount charged by the reorganization managers, is it?

A. Yes, sir.

Q. The reorganization committee?

A. Yes, sir.

Q. The next group of items is for "Additions made later, by means of funds procured through issuance of 5,282 First Consolidated Bonds." Now, those are additions to the property made after the reorganization?

A. No, sir, at the time, by the reorganization committee.

Q. Consisted of the purchase of real estate of the value of $4,900.43?

A. The funds that were procured, these $5,282,000 first con-

solidated bonds are the bonds that were issued at that time and the proceeds used by the reorganization committee.

Q. Before the property was turned over to the Railroad Company?

A. Yes, sir; they were issued November 2, 1894, the entire amount of $5,282,000.

Q. And when was the property turned over to the Railroad Company?

A. In November, 1894.

Q. Then these expenditures must have been made by the Railroad Company, weren't they?

A. No, sir, I shouldn't think so.

Q. You think they were made by the reorganization committee before the property was turned over to the Railroad Company?

A. That is my understanding.

Q. What does the first item there under that heading "Equipment" consist of.

A. The railroad equipment.

Q. Rolling-stock?

A. Yes, sir.

Q. What is the real estate referred to there?

A. Used for railroad purposes.

Q. You don't know what particular real estate that is?

A. No, sir.

Q. But it is part of the railroad property, is it?

A. Yes, sir.

Q. Used for railroad purposes?

A. Yes, sir.

Q. Then there is a "Discount on $2,600,000 on first and refunding bonds" of $182,000?

A. That is that same confusing error in connection with the discount.

Q. Well, the other discount on the preferred stock was $133,185.50?

A. Well, I mean on the bonds, the item up above, the $500,000.

Q. No, it doesn't agree with that, because that is $281,947.06 and this is $182,000; it doesn't seem to be on the same bonds at all. The next item, "Lake Park hotel property," is a hotel, is it?

A. Yes, sir.

Q. Where?

A. Tonka Bay.

Q. On Lake Minnetonka?

A. Yes, sir.

Q. "Redemption of Kenwood property," what property is that?

A. Located in Kenwood district.

Q. What is it?

A. Real estate.

Q. Of what character?

A. Vacant property.

Q. Is it adjacent to the right-of-way?

A. No, sir.

Q. How far is it from the railroad?

A. I couldn't answer that exactly, but it is near by.

Q. Some blocks?

A. I shouldn't say that it was; it is close.

Mr. BUTLER: Is is prospective railway property?

WITNESS: Our shops are right there in the Kenwood district and this property is adjacent.

Mr. BUTLER: What is it held for?

WITNESS: I suppose it is of some value. It is property that the Company acquired.

Q. Do you know the purpose of acquiring it?

A. No, sir.

Q. It is not prospective railway property, is it?

A. Not used so at the present time.

Q. It is an investment of the Company in outside property?

A. For some particular reason with which I am not familiar.

Q. An investment made before or after the reorganization?

A. I couldn't answer as to the exact date.

Q. Or when the redemption was made you don't know?

A. No, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Were all of the bonds mentioned in Exs. 5 and 6 issued as a part of the re-organization in 1894?

A. No, sir.

Q. What was the total issue of bonds in connection with that re-organization?

A. $9,266,800.

Q. That was practically the same as the amount of the bonded debt prior to the re-organization?

A. Yes, sir.

Q. And the balance of the bonds shown on Ex. 5 have been issued and sold since the re-organization?

A. I might make a little correction—to the extent of two and a half million of the first and refunding bonds—that were really issued in connection with the re-organization; so that would increase the amount that I have stated there to that extent. That is an issue of first and refunding bonds to take up the first and preferred stock of two million and a half. That would increase it to $11,766,800.

Q. And leaving capital stock at $10,000,000?

A. Yes, sir.

Q. The balance of the bonds shown upon Ex. 5 have been issued and sold since the re-organization of 1894?

A. They have been issued since; not all sold.

Q. Will you please give us a statement of the issuance of

those bonds as they have been issued since the re-organization, and the consideration, whether it was cash or something else received for them?

A. It would be in this statement.

Q. In what statement?

A. Ex. 7; because all of the stock and bonds that have been issued have been charged to the cost of the road.

Q. Well, the pages 2, 3 and 4 of Ex. 7 are practically a construction account, are they not?

A. Yes, sir.

Q. On those pages there is no statement purporting to give the bonds issued or the price received for them?

A. I see what you want. Of course, the bonds have been issued to cover the cost of construction, but I can give you that statement to show the exact amount of the issue, when made and what it covered.

Q. And, where they were sold for cash, the exact amount of cash received for them.

Witness notes request.

Mr. DURMENT: And if they were exchanged for others, state just for what they were exchanged and on what basis.

Q. There has been no capital stock sold or issued since the re-organization?

A. No, sir.

Q. And the present outstanding capital stock is the same stock which was outstanding prior to the re-organization?

A. With the exception of that—yes, exactly the same, no exception.

Q. Well, such as is outstanding?

A. There is no exception, it is the same.

Q. The present Minneapolis & St. Louis Railroad Company is the same corporation as the Minneapolis & St. Louis Railway Company, is it not?

A. It has all of their property.

Q. I know. Is it the same corporation with its name changed, or is it a new and different corporation?

A. I should say it was a new and different corporation.

Q. Well, can you give us that information?

A. I can give you the articles of incorporation of the Minneapolis & St. Louis Railroad Company.

Q. Yes.

Witness notes request.

Q. And you were to get us the charter or articles of incorporation of the original company.

The MASTER: That is, did the old company change its name, or was there a new corporation that took over the property of the old corporation?

Mr. O'BRIEN: Yes, sir.

WITNESS: It was a new corporation, and it did change its name, and it did take over the property of the old company.

Mr. O'BRIEN: You will remember that, in the case of the Northern Pacific, it was an entirely new corporation.

The MASTER: That is what I wanted to find out here.

Mr. O'BRIEN: Well, Mr. Scott says he will produce the information upon that point. He doesn't know whether—

WITNESS: I know this, I know that it is a new corporation.

The MASTER: A new corporation?

WITNESS: Yes, sir.

The MASTER: Well, then, what became of the stock of the old corporation? You say that this is the same stock,—as I understood you.

WITNESS: For the same amount; not the same stock, no, sir. It is a new corporation, and the name of the company was changed.

Mr. BUTLER: You had better fetch the articles of incorporation.

WITNESS: Yes.

Mr. O'BRIEN: Yes, bring that down.

Q. Upon the assumption that it is a new corporation, the method adopted was that the first preferred stock of the Railway Company, amounting to $2,500,000, was surrendered in exchange for an equal amount of the first and refunding bonds of the new Company, the Railroad Company?

A. Yes; not of the Railway Company. That two and a half million first preferred stock was stock of the Railroad Company, the present company.

Q. Then that surrender could not have been made as a part of the re-organization?

A. No, sir, it was made subsequently.

Q. It was made subsequently?

A. Yes, sir.

Q. In Ex. 7 it appears that the transfer of the stock was made in June, 1899?

A. Yes, sir.

Q. That was five years after the re-organization?

A. Yes, sir.

Q. So that the retirement of the stock had nothing to say to the re-organization?

A. No, it was retiring a like amount assumed by the re-organization.

Q. Well, there was no assumption of stock, was there?

A. Yes; that is, there were two and a half millions of stock that was issued at the time of the re-organization which was subsequently taken up or exchanged for bonds.

Q. Well, we would like to have a history of that reorganization, Mr. Scott, if you will post yourself upon that and give us a history of the re-organization, exactly what securities were substituted and how it was done.

A. I can state (perhaps I can answer that, maybe not clearly enough, but if not, I will give you what you want) an assessment was made upon the old stock of the Railway Company; a twenty-five per cent assessment was made, which (the

old stock being ten millions) realized for the re-organization committee two and a half millions, for which they issued this two and a half millions first preferred stock of the new company. That is, if you held stock in the old company and you wished to own stock in the new company, you had the privilege of turning in your old stock, paying a twenty-five per cent. assessment, and they would give you in exchange, or in total for the two and a half million, first preferred stock of the new company in addition to the share for share of the preferred and common.

Q. That is, they would give you in exchange 125 per cent of your former holdings?

A. Practically that is it.

Q. Of which twenty-five per cent was made up of first preferred stock, forty per cent of second preferred, and sixty per cent of common?

A. Exactly.

Q. Now, that first preferred stock was retired in 1899 by the substitution of bonds?

A. Yes, sir.

Q. Of the first and refunding bonds, to an equal amount?

A. That is correct.

Q. As I understand it, then, Mr. Scott, the total authorized and outstanding capital stock of the old company (that is, the Minneapolis & St. Louis Railway Company) was ten million dollars?

A. Yes, sir.

Q. Was that either preferred or common?

A. Preferred and common; four million preferred and six million common.

Q. The authorized capital stock of the new Company, or the Minneapolis & St. Louis Railway Company, was $12,500,000?

A. Yes, sir.

Q. Of which two million [illegible] thousand dollars was first preferred?

A. Yes, sir.

Q. Four million [illegible] preferred and six million common?

A. Yes, sir.

Q. The old stockholders [illegible] their stock and paid an assessment of [illegible] upon their holdings?

A. Yes, sir.

Q. And received in return [illegible] per cent of their former holdings?

A. Yes, sir.

Q. Of which [illegible] in first preferred stock, forty per cent in second preferred stock, and sixty per cent in common stock?

A. Yes, sir.

Q. Then in 1898 the [illegible] preferred stock was retired by the substitution of first and second bonds, dollar for dollar?

A. Yes, sir.

Q. So that the present outstanding is second preferred stock $[illegible] and common stock $40,000,000, the same as was in the original [illegible]?

A. Yes, sir.

Mr. Burnes. There is no first preferred now.

Q. There is no first preferred now?

A. No second preferred.

Q. There is only [illegible] of preferred stock now?

A. That is the first condition of first preferred.

Q. Between the time of the reorganization and the retirement of the first preferred stock, has any dividends been paid upon that preferred stock?

A. I couldn't answer that question in reference to the records; I don't think there was.

Q. Will you please [illegible]?

Witness notes [illegible].

Q. Turning to page 2 of the exhibit, I find cost of Pacific Division $2,128,732.39. Will you describe what the Pacific Division is.

A. It is the line (that is on the map) from Morton, Minnesota, to Watertown, South Dakota, 122.9 miles.

Q. Which it is stated here was "purchased from W. M. & P., February 20, 1889, $13,000 per mile, 122.9 miles, $1,597,700." What is "W. M. & P."?

A. The Wisconsin, Minnesota & Pacific Railway Company.

Q. Now, you say that was purchased in 1899?

A. 1899.

Q. It is given here as 1889.

A. Is it? 1889 is right.

Q. Purchased in 1889, for the price of $1,597,700; how was that purchase price paid?

A. It was a cash settlement, but I would have to look at the records to be sure about that.

Q. Will you please ascertain that?

A. Yes, sir.

Q. If it was paid in cash in 1889, that amount must be included in the cost of the property at the time of the re-organization as given on page 1, must it not?

A. Well, it is not.

Q. Well, so far as it appears, that is a duplication of that item, is it not?

A. No, sir, that property was acquired, purchased outright, subsequently to the re-organization; it had nothing whatever to do with it, I know.

Q. Your statement gives it as having been purchased February 20, 1889, and then you add to that the additional expenditures.

A. You see the re-organization was in 1894, and this property was purchased in—must have been 1899.

Q. Well, will you please examine that?

A. Yes.

Q. And give us the full details of the purchase.

The MASTER: That is a mistake in the exhibit, you think?

WITNESS: Yes, sir; I know that it was purchased since the re-organization. The re-organization committee had nothing whatever to do with that property.

Q. If you will turn to page 1, you will find that in "bonds assumed" at the time of the re-organization are bonds for "Pacific Extension, $1,382,000."

A. Yes, sir.

Q. Isn't that the same company?

A. No, sir.

Q. Isn't that the same?

A. No, sir; that is from Hopkins to Morton. That Pacific extension spoken of as the "Pacific Extension," was from Hopkins to Morton; then they purchased this property from Morton to Watertown from another railroad company.

Q. There is an item of discount on bonds, $281,947.06.

A. Yes, sir, that is the reason I made the statement that I was quite sure it was paid for in cash, that they issued the bonds, sold them to get the money that they would need with which to pay for that; but I will give you the details.

Q. That is the same item as appears on page 1, where a credit for that amount is given against the discount on first consolidated mortgage bonds, which you said this morning should be eliminated?

A. Yes, sir.

Q. That is, the credit should be eliminated?

A. Yes, sir, there is a mix-up in the division of that discount in some way. This statement here will represent the total cost, as I have testified, of the property to the present Company, according to the books, including all discount items, of which the amount is stated on the last sheet of Ex. 7.

Q. The last item under this heading "Cost of Pacific Divi-

sion," on page 2, is "Equipment, 122.9 miles at $2,000 per mile, $245,800." From what did you get that amount?

A. From the cost of the equipment that was purchased with which to operate the property. You see the property as purchased there, was simply the right-of-way and buildings, bridges and tracks, without any equipment.

Q. That is a part of the general equipment of the road, is it?

A. Well, it would be used as such, but at that time, of course, the business was light, and they estimated they would need about that much equipment to man the property.

Q. Well, is that an estimate as to the amount of equipment, ($2,000 per mile) or is it the exact amount paid for equipment and placed upon that division?

A. It is the exact amount.

Q. Why is it placed in here at $2,000 per mile?

A. Because there was that much equipment purchased—$245,800—because of that additional mileage of the property.

Q. You simply desired in this estimate to indicate how much it would be per mile?

A. Yes, sir. By the way, it is about two and a half times too low.

Q. You say this was bought for that division?

A. Yes, sir.

Q. Does it appear on your books as purchased for that division; is there anything on the books of account which will show this purchase was made on account of that division?

A. Yes, sir, the entry would be as part of the cost of that property.

Q. The next heading is "Cost of New Ulm Extension, New Ulm to Storm Lake, 133.28 miles, completed and opened for traffic August 19, 1900." That is a line from New Ulm to Storm Lake?

A. New Ulm, Minnesota, to Storm Lake, Iowa, yes, sir. It

is the line from Winthrop down to Storm Lake, in the western part of Minnesota.

Q. When was the construction of that line commenced?

A. I haven't that exact date, but they were about a year in building it, if I remember correctly.

Q. It was commenced a considerable time after the re-organization, then?

A. Yes, sir.

Q. And a separate account of it has been kept upon the books of the Company?

A. Yes, sir. That is a line that the Company constructed themselves, and we have the complete records on that piece of property.

Q. And this amount of $2,378,631.14 is the cost of that line as it appears upon the books of the company?

A. Yes, sir; you will notice, though, that is the cost of constructing simply the line for operation; there is no equipment in that amount at all. That is the right-of-way, rails, ties, buildings, bridges, etc., but the equipment needed for operating it is not included in that item of cost.

Q. But it does include everything in connection with the acquiring of right-of-way and construction of the road?

A. Yes, sir, with perhaps one exception; I don't think that they charged up to the cost of construction any portion of the expense of the management; or, in other words, they didn't divide the cost of administration as between the cost of operation, at that particular time, and the cost of construction, which perhaps might have been done.

Mr. DURMENT: You mean by that the general cost of maintaining the organization?

WITNESS: Yes, sir.

Mr. DURMENT: Of the entire system?

WITNESS: Yes, sir.

Q. You have included here engineering expenses $81,000?

A. Yes, sir.

Q. And every expense except a proportion of the general expense of managing the railway?

A. Yes, sir.

Q. And by that you mean salaries of officers and—

A. I mean general administration. Of course, the engineering is in there; all expenses of an engineering character, perhaps, is in there.

Q. All expenses of an engineering character are in that?

A. Yes, sir.

Q. But you mean general expenses of administration?

A. Yes, sir.

Q. That amounts to how much a mile, Mr. Scott?

A. Between seventeen and eighteen thousand dollars per mile. I can give it to you exact, if you wish it. If that is close enough—

Q. Well, perhaps that is close enough. Between seventeen and eighteen thousand dollars per mile?

A. Yes, sir.

Q. The next heading is "Cost of Minnesota, New Ulm & Southwestern Railroad, Winthrop to New Ulm." Mr. Durment calls my attention to the fact that the second last item under the heading "Cost of New Ulm Extension," is "general expenses, $13,434.32."

A. Yes, that is the item that the Interstate Commerce Commission—this distribution is in line with I. C. C. Classification, and one of their accounts is an account called "General Expenses" and covers such items of cost of construction that you cannot or you should not put it in the other items.

Q. Well, are not those the same items that you referred to as possibly not included?

A. No, I think not.

Mr. DURMENT: Well, do you know?

WITNESS: Not positively, no.

Mr. DURMENT: That represents a cash expenditure, though, does it?

WITNESS: Oh, yes.

Q. That is simply an estimate, isn't it?

A. What?

Q. This item $13,434.32.

A. No, sir.

Mr. BUTLER: I think the books will show.

WITNESS: Exact items; we have all the vouchers to cover every item that is in there.

Q. The next heading is "Cost of Minnesota-New Ulm & Southwestern R. R.—Winthrop to New Ulm—20. 22 miles, purchased from M. N. U. & S. W. R. R., March 1, 1899." That is a road from New Ulm to Winthrop in Minnesota?

A. That is from Winthrop to New Ulm, yes, sir.

Q. And was constructed by the New Ulm & Southwestern Railroad?

A. Minnesota, New Ulm & Southwestern Railroad.

Q. That property was purchased by the Minneapolis & St. Louis Railroad Company March 1, 1899?

A. Yes, sir, the transfer was made at that time. I am quite sure that I have all the records in connection with that construction.

Q. That railroad had been constructed by an independent company, had it not?

A. Incorporated as such, but the Minneapolis & St. Louis really constructed the line.

Q. Did the Minnesota, New Ulm & Southwestern Railroad have outstanding stock and bonds?

A. No, sir, just a company organization;—I am quite sure for just construction purposes.

Q. Did it have no outstanding stock?

A. No, sir.

Q. And no bonds?

A. No, sir.

Q. And the cost of the construction had been advanced by the Minneapolis & St. Louis Railroad?

A. Yes, sir.

Q. Then without the payment of any additional sum, the property of the Minnesota, New Ulm & Southwestern Railroad Company was transferred to the Minneapolis & St. Louis Railroad Company?

A. Yes, sir.

Q. And the title taken in the name of the Company?

A. Yes, sir.

Q. Without any other consideration than the amount already advanced for construction?

A. Yes, sir.

Q. And those amounts so advanced for construction appear as the items under this heading?

A. Yes, sir.

Q. According to the books of the Company?

A. Yes, sir.

Q. And are open to our inspection, as you have expressed?

A. Yes, sir.

Q. You say that prior to July 1, 1896, these expenditures were made. The road was fully completed prior to that time, was it?

A. It was not; the Minneapolis & St. Louis had to expend the additional sum that is shown there in order to finish it up for operation, to complete it, in other words.

Q. Then, the first series of items were made prior to July 1, 1896?

A. Yes, sir.

Q. The second series under "Expenditures by M. & St. L. R. R. prior to March 1, 1899," on page 3, were made between July 1, 1896, and March 1, 1899?

A. Yes, sir.

Q. The first group of expenditures amounting to $237,546.51 and the second group to $56,123.26?

A. Yes, sir.

Q. Then you have added to that a deficit from operation from July 1, 1896, to February 28, 1899, of $6,330.23?

A. Yes, sir.

Q. Making a total, as you claim, of the cost of that road of $300,000?

A. Yes, sir.

Q. The operation of the road was always by the Minneapolis & St. Louis?

A. Yes, sir.

Q. The Minnesota, New Ulm & Southwestern Railroad never attempted to operate the road at all?

A. No, sir.

Q. And this deficit that you give here from July 1, 1896, was arrived at by some method of computation which you adopted?

A. We keep our accounts, both revenues and the cost of earning those revenues, by divisions, and this division was so kept.

Q. You kept the income account of that division separately?

A. Yes, sir.

Q. Assigning to it a proportion of the charges upon freight originating or terminating on that division?

A. Crediting it with the revenues earned, and charging it with the cost of earning those revenues.

Q. But I say where the freight was carried over other divisions of the road as well as that division, you made an apportionment of the earnings upon a basis which you adopted?

A. Yes, sir.

Q. That was a mileage basis of—

A. That is the basis now, and I presume it was then.

Q. And by that system of computation your books show that

there was a net deficit in the operation of that division of $6,330.23?

A. Yes, sir.

Q. Which you have charged to the cost of the road?

A. Yes, sir.

Q. Now, that road was constructed and paid for by the Minneapolis & St. Louis?

A. Financed, or the money advanced.

Q. Paid for by them. You say the construction was paid for by that road?

A. Yes.

Q. It was never operated except by the Minneapolis & St. Louis?

A. No.

Q. It was operated in connection with the Minneapolis & St. Louis?

A. Yes.

Q. It was one of the branches or feeders of that road?

A. Yes.

Q. And by the system of accounts adopted by you you charge that particular road or division with this net deficiency?

A. Yes, sir.

Q. And add that to the cost of construction?

A. Yes, sir.

Q. You have given no credit in coming to this conclusion, as to the increased revenues derived upon the other division from the operation of this particular division, have you?

A. That is, given them any proportion of the revenue earned by the other line?

Q. You have given no credit on account of that; you have simply credited it with the proportion of the entire earnings?

A. According to its own mileage, if that was the custom then—I presume it was.

Q. But if, as a matter of fact, from the revenues from

freight and passengers received by the Minneapolis & St. Louis Railway Company, or the Minneapolis & St. Louis Railroad Company as a whole, in which the particular division now under consideration participated, a profit was made, no corresponding credit has been given to offset this deficiency?

A. That division never earned a profit out there.

Q. I am not talking of the division.

A. Well, it would be impossible to determine that question, I couldn't answer it.

Q. And it is impossible to determine, is it not, then, whether or not the operation of that division was profitable or unprofitable to the road as an entire system?

A. That is a question, yes, hard to answer.

Q. Isn't that true?

A. That is true of any branch line.

Q. Therefore it is impossible to say that there has resulted a deficiency from the operation of that division, isn't it?

A. Well, all railroad accounts are kept by divisions.

Q. I am not speaking about that.

A. I am just simply making a statement.

Q. I am speaking about the fact. If it is impossible to say whether or not the operation of that road has been profitable or unprofitable to the system as an entirety, it is impossible to say that any deficiency should be charged to it?

A. You might say, then, that when we lose money in Iowa and in South Dakota, we should take a proportion of that from the Minnesota revenues and operating expenses. We don't do it; we don't pay taxes on that basis.

Q. They are not similar cases at all; it has nothing to say to the question that I ask you. What I asked you was this: Whether you were able to say whether or not the operation of the 20 miles of road constructed between Winthrop and New Ulm in the way you have described has been profitable or un-

profitable to the Minneapolis & St. Louis Railroad Company as a whole.

A. I couldn't answer that.

Q. You can't answer that?

A. No, sir.

Q. And yet you charge a deficiency of $6,000 because under your system of accounting you find a net deficiency upon that division?

A. Yes, sir, that is the result there shown.

Q. The next item is "Des Moines & Fort Dodge Railroad Stock, 25,300 shares of common, $641,678.76." What is that?

A. That is stock in the Des Moines & Fort Dodge Railroad Company that the Minneapolis & St. Louis Railroad Company purchased and issued bonds to cover.

Q. That Des Moines & Fort Dodge Railroad Company is an independent railroad corporation?

A. Yes, sir.

Q. In Iowa?

A. Yes, sir.

Q. Operated independently?

A. Yes, sir; that is, operated for them by the Minneapolis & St. Louis, but it is a separate corporation and a separate accounting is kept.

Q. Well, it is operated as an independent railroad company, is it?

A. They are organized, yes, sir, and incorporated.

Q. And has it outstanding capital stock?

A. Yes, sir.

Q. And the interest of the Minneapolis & St. Louis Railroad Company is in the ownership of a certain portion of the stock?

A. Yes, sir.

Q. What is the total stock of that company?

A. I could not answer that here. The statement shows that

the Minneapolis & St. Louis owns 25,300 shares of their common stock.

Q. You say that is operated by the Minneapolis & St. Louis; what do you mean by that?

A. Under contract and lease.

Q. You mean the track is leased?

A. Yes, sir, the property is leased; the entire property.

Q. Then this Des Moines & Fort Dodge Railroad Company is not operated as a railroad itself, the property is all leased to the Minneapolis & St. Louis?

A. Yes, sir.

Q. And the Minneapolis & St. Louis derives the total revenue from the operation of that property?

A.. No, sir, it derives the benefit of whatever business they can interchange, but that company receives all its own revenue and pays for the cost of operation, and a net settlement is made at the end of each year.

Q. Have you the lease between the Minneapolis & St. Louis Railroad Company and the Des Moines & Fort Dodge Company?

A. Yes, sir.

Q. Will you produce that.

A. Yes, sir.

Q. The next item is "Discount on $5,000,000 first and refunding bonds sold in March, 1899, $750,000." That was a discount of fifteen per cent?

A. Yes, sir.

Q. Those bonds were sold at 85?

A. Yes, sir.

Q. And the next item "Discount on $500,000" of $2,500?

A. Yes, sir.

Q. A discount of five per cent?

A. Yes, sir.

Q. Those discounts are also charged to this construction account?

A. Yes, sir, the cost account.

Q. Is there any difference in "Cost account" and "Construction account"?

A. Oh, a construction account would represent cost, of course.

Q. It is simply using different terms to describe the same thing, is it not?

A. Cost to this Company of its property is what I meant by "Cost account."

Q. Well, cost to this Company would appear in your construction account, would it not?

A. No, not altogether, because this present Company did not construct all of its line. They purchased or acquired certain finished properties; they constructed some of its properties, which of course the records would show.

Q. Then the cost account and the construction account, since the reorganization would be the same?

A. Yes, sir, exactly.

Q. And assuming that what you call the cost at the time of the reorganization is the construction account, this would be the same as the construction account?

A. Yes, sir.

Q. The next item is the reconstruction of line Hopkins to Chaska, during 1902 and 1903. Now, what is that?

A. About 19 miles of railroad that was entirely rebuilt, grades reduced, sags raised, lines straightened, new culverts put in; in other words, reconstructing the property so that it could be an economy to operate. That was the object.

Q. The cost of that has been charged to the capital account or construction account?

A. Yes, sir.

Q. It added no additional mileage to the road?

A. No, sir.

Q. But was in effect an assignment of the wasbed?

A. In order to obtain control of operation over that piece of track.

Q. And those items appear on your books?

A. Yes, sir; I have all of them.

Q. The next is, "Purchase of C. B. & P. Ry.'s one-half interest in Albert Lea property," $[illegible]. "Part purchase of the Chicago, Rock Island & Pacific Ry.'s one-half interest in terminals at Albert Lea."

A. Yes, sir.

Q. Consisting of the [illegible]?

A. Of the terminals [illegible] owned a one-half interest and this was the [illegible] part of the time; it was made because of the [illegible] of their close alliance in traffic [illegible] their own line to the Twin Cities.

Q. How was that [illegible] paid?

A. Cash.

Q. "Minneapolis & [illegible] assumed by N. P. Ry. July, 1904." That appears to be a credit.

A. You will find a [illegible] on the first page under "Bonds assumed," the first item, entitled "Bonds assumed," which furnished the charge, and the [illegible] was made to the Northern Pacific [illegible] credit at that time.

Q. When the Northern Pacific purchased the Duluth property?

A. Yes, sir.

Q. And assumed certain [illegible].

A. Yes, sir.

Q. The result of that [illegible] the Minneapolis & St. Louis of its [illegible] on account of those bonds?

A. Yes, sir.

Q. And so you have considered it here as a credit?

A. Yes, sir.

Q. On page 4, Additions and Betterments, the items under that heading aggregating $1,070,516.32 was the amount expended during what period for additions and betterments?

A. Between the reorganization period and April 30, 1908, the total expenditures made during that entire period improving the property.

Q. Then should that not include the reconstruction of the line from Hopkins to Chaska, appearing on page 3?

A. It could, but we preferred to keep that item separate because of the extensiveness of its nature.

Q. So there is no duplication of those items?

A. No, sir; you could run them together and increase this sum to that extent and have the account "additions and betterments," but we simply kept it separate for special reasons.

Q. These are charges appearing upon the books of the Company?

A. Yes, sir.

Q. These items appear upon the books of the Company?

A. Yes, sir.

Q. The next heading is "Equipment," the items aggregating $299,903.33. Those are also since the reorganization in 1894?

A. Yes, sir.

Q. And represent the total equipment purchased?

A. No, sir.

Q. Well, where is there other equipment?

A. Some of the equipment that has been purchased since that time has been purchased to replace worn-out equipment.

Q. I mean does that represent the total expenditure for equipment since the reorganization.

A. No, sir, it would not. It represents the total expenditure for equipment that is charged to capital or cost of road; but I say—

Q. At this time?

A. From the reorganization up to this time; but we have purchased other equipment during that period.

Q. Do you mean that in this account as it appears upon the books of the Company there are certain credits given for worn-out equipment?

A. Not in this account. I can explain it to you if you care to have me do so.

Q. Yes, I would be glad to have you.

A. When a freight car, locomotive or passenger coach is worn out, dismantled, we credit a fund account with the original cost of that car or locomotive and charge out to stock and cost of operation that amount. Now, that fund accumulates until they wish to buy, we will say, 100 stock cars, and when those cars are purchased they charge the cost of those 100 cars to this fund; in other words, simply a replacement. It would not be proper to charge it to cost of road.

Q. This item of $299,903.33 represents the cost of the present equipment which has been purchased since the reorganization?

A. It represents that portion of it charged to cost of road or capital account, but it does not represent the equipment that was purchased to replace the worn-out equipment.

The MASTER: This is the increase, do I understand?

WITNESS: Yes, sir.

Q. Yes, it is simply the equipment that made a net increase in the equipment?

A. That is correct.

Mr. DURMENT: That increases the amount charged?

Q. No, no, the net increase of the equipment.

A. Yes.

Q. That they originally had ten cars and now they have got 15 and—

A. It is the money value, not the number; it is equipment value, not the number of cars.

By Mr. DURMENT:

Q. You charge up to capital, when you start, what you pay for your cars; when you replace those you replace them with exactly the same cars, and that sort of thing, that is not charged to capital, but if you buy additional cars, then you charge the cost of those to capital?

A. Yes, sir.

Q. Or if you buy more expensive cars, you add the additional expense to capital?

A. That is it. You see the equipment is dismantled monthly. All the time they are dismantling cars or wrecking them or burning them up. Now, when they are burned or wrecked or dismantled, the value of that equipment is credited to a fund. It is credited to a fund, and then the new equipment later purchased is charged to that fund; that is, you use up the fund that is set aside. In other words, when a car is dismantled we credit the fund and charge the cost to operating expenses and stock. If some portions of that stock are good material it goes into stock material.

The MASTER: The original cost of the car?

WITNESS: Yes, sir.

By Mr. O'BRIEN:

Q. Does this item of $299,903.33 "Equipment," on page 4, include any portion of the item under "Cost of Pacific Division" on page 2, "Equipment $245,800"?

A. No, sir.

Q. That makes a total cost of property, as given by you, to April 30, 1908, of $30,318,019.71?

A. Yes, sir.

Q. And to that should be added the par value of the Minnesota Transfer Company's stocks and bonds, stock $7,000, bonds $144,000, St. Paul Union Depot Company Stock, $103,600?

A. Making a total of $30,572,619.71.

Q. Now, deduct from that the original, or what you call the "cost of the property" under the re-organization, $22,499,-557.36—

A. It leaves $8,073,062.35.

Q. I call your attention to Ex. 8. In Ex. 8 you take the cost of the property as finally arrived at in Ex. 7, $30,572,-619.71?

A. Yes, sir.

Q. Made up in the manner that you have just described with reference to Ex. 7?

A. Yes, sir.

Q. Now, the first division there is on the basis of mileage?

A. Strictly, yes, sir.

Q. The next is division or apportionment of the property between the different states on the basis of gross revenue?

A. Yes, sir.

Q. Is that gross revenue computed in the same manner in which the revenue is computed in the reports to the State of Minnesota for the purpose of taxation?

A. Yes, sir.

Q. You have followed the same system that is adopted for the purpose of taxation?

A. Yes, sir.

Q. On the basis of the funded debt you add to the first portion the funded debt, do you not?

A. You mean the third item?

Q. Yes.

A. Yes, sir, and that is as per Ex. 5.

Mr. BUTLER: That is, dividing the cost on the same basis as the debt is divided on Ex. 5?

WITNESS: Using the same percentage, as you will notice, on Ex. 5.

Q. You first take the division of the funded debt that you have made up on Ex. 5 and then you apportion the cost of the

road according to those percentages?

A. Yes, sir.

Q. The percentages that you have obtained in Ex. 5?

A. Yes, sir.

Q. And the last apportionment of the cost is on the basis of Ex. 6?

A. Yes, sir.

Q. The last apportionment is made by using the percentages which you found on the theory explained in Ex. 6?

A. Yes, sir.

Q. Mr. Scott, I wanted to ask you to explain a little more fully the method of keeping your accounts with reference to equipment. Will you please explain that?

A. Keeping our equipment?

Q. Yes.

A. You mean the cost?

Q. Yes, the cost of equipment.

A. You want me to start in with a car that is dismantled, you mean?

Q. No, I want you to start in and just tell us how that account is kept, explain it. When equipment is purchased, the cost of that equipment is charged to what account?

A. In the first place, it is charged to this fund of which I spoke, providing there is anything in the fund; if not, to new equipment, or, in other words, to capital account, cost of property.

Q. Well, it is charged to capital account; is it debited to capital account?

A. Yes, sir.

Q. And then the cash is credited for the amount if it is paid in cash?

A. No, new equipment purchased that is charged to the capital account the company recovers through the issuance of its bonds. First and refunding bonds would be the issue.

Q. Well, then, the credit is given to what account? Wherever you make a charge you give a corresponding credit, don't you?

A. Yes, sir. It would be charged to cost of road and it would be credited to first and refunding bonds—would be the credit account, the ultimate entry.

Q. The first and refunding bonds would be the first—

A. Bond account, in other words.

Q. Bond account would receive a credit?

A. Yes, sir.

Q. And cost of road would be charged?

A. Yes, sir.

Q. Now, let us imagine that we are commencing with the account and the first purchase is five engines, the entries are made in the way you speak of—

A. The first purchase would be charged to cost of equipment, cost of property.

Q. If those engines cost $5,000 apiece, there would be $5,000 charged to cost of road?

A. Yes, sir.

Q. And that amount credited to bond account?

A. Exactly, same amount.

Q. Now, a year after that time, you purchase five more engines at the same price, similar entries would be made?

A. Similar entries, yes, sir.

Q. But in the meantime two of your engines had been destroyed by a wreck, what entries would be made in the books as a result of that?

A. At the time of the destruction of the engines we would credit the fund account of which I spoke (equipment replacement fund) and charge operating expenses with a net loss on those engines. By net loss I mean the total loss less the salvage. Whatever the salvage amounted to would go back into "capital stock" and would be so charged.

Mr. BUTLER: When you said "total loss" did you mean original cost less salvage?

WITNESS: Original cost less salvage. Say we start out here with a road that has ten locomotives. The purchase price or the cost of those locomotives has been charged to your capital account. You run along for a period of a few years and one of those locomotives is destroyed in a wreck or so badly damaged that you have got to remove it from the service, take it out; now, that locomotive (say it cost $10,000,) when it has been destroyed we credit it to equipment replacement fund, which is just a fund account; we create, in other words, a liability account of $10,000, the exact cost of the locomotive originally. Now we have a fund of $10,000 which you will consider in connection with your cost-of-road item. You had ten locomotives or $100,000 to commence with; now, if you are getting at the cost of your road you have got to consider the amount you have in this fund. So far you have got $10,000 in your fund and you have got $10,000 in the cost of road. Now, you buy another locomotive to replace the one that was destroyed—you must have it—the new locomotive, we will say, costs $15,000 (they cost more now than they did then), well, you have a fund set aside of $10,000. Now, you charge to that fund $10,000 of the $15,000 that you pay for the new locomotive and your fund is wiped out, and the difference of $5,000 you charge to cost of road and the ten locomotives that remain still in service in your cost of road will represent $105,000. At the time that locomotive is destroyed, when you credit the fund, you have got to have a debit account. We will say that there was $1,000 of value in that locomotive and $9,000 completely lost, the $1,000 that is good serviceable material, in the way of scrap or anything that there is there, is charged to your stock account (that is, store stock, in which you carry all your supplies and material); the $9,000 completely lost is charged out to cost of operation—where it should be. The Interstate Commerce

Commission, within the last year, have established a "depreciation account" to take care of monthly wear and tear on your locomotives.

By Mr. DURMENT:

Q. Then if I understand you aright, in this replacement fund account the salvage is never entered, never shown?

A. Yes, it is there, it is a part of the $10,000.

Q. No, in the account, as a separate item?

A. No, you can't separate it. You paid $10,000 for that locomotive and the $10,000 goes to the credit of the fund—where it belongs.

Q. In other words, you simply start out by charging against this fund—or crediting to it, I don't care which—

A. Crediting it.

Q. —the original cost of the engines first bought—

A. Yes.

Q. —then every time you buy a new engine, if the cost of a new engine in any way exceeds the original cost of the old one, it is that difference that is charged to capital account?

A. That is it.

Q. That is all there is to it?

A. Yes, sir.

Q. So far as this particular account is concerned, the question of salvage does not enter into it on either side of the ledger?

A. No, sir.

Adjourned until Friday morning, August 7th.

FEDERAL BUILDING, St. Paul, Minn., August 7, 1908, the hearing was resumed at 10 A. M.

LEMUEL G. SCOTT,
recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. Mr. Scott, you were asked Wednesday to ascertain whether or not any dividends had been paid upon account of the stock of the Minnesota Transfer Company.

A. There is some of this information that I was not able to get together over yesterday; it required considerable digging and could not be done by more than one person, and I didn't get together all the information you have asked for, I have some of it only.

Q. Well, can you now inform us as to whether or not the bonds and stocks of the Minnesota Transfer Company were purchased by the Minneapolis & St. Louis Railroad Company at the same time?

A. All of the stock and a portion of the bonds were purchased at the same time.

Q. Give the transaction. Give the history of it.

A. That is one of the memoranda that I hadn't completed.

Q. You desire further time to ascertain the facts connected with that?

A. Yes, sir, if you please.

Q. You were asked to furnish a detailed list of the amounts and times of payments from the Minneapolis Transfer Company to the Minneapolis & St. Louis Railroad Company.

A. That statement is ready, but in pencil form only and I left it to be copied; I would like further time on that, also.

Q. And also you were asked to ascertain whether or not anything was paid for the stock of the Minneapolis Transfer Company.

A. The Minneapolis Transfer or the Railway Transfer of Minneapolis?

Q. Well, it is the Minneapolis Railway Transfer Company, the Transfer Company we are speaking of that is controlled by the Minneapolis & St. Louis Railway Company.

A. Well, that is the Railway Transfer Company of Minneapolis. There are two of those companies, which are liable to be confusing; the Minnesota Transfer Railway Company and the Railway Transfer Company of Minneapolis.

Q. I am now referring to the stock of the Railway Transfer Company of Minneapolis.

A. What was the question?

Q. Whether or not the Minneapolis & St. Louis Railroad Company paid anything for the stock of that company.

A. They did not.

Q. They simply organized the Transfer Company through their officers?

A. Yes, sir.

Q. And the stock was issued as fully paid up and delivered to the Minneapolis & St. Louis Railroad Company without any cash consideration for it?

A. Yes, sir, and the books so record it. The entry in the books was made simply to show the record and at a nominal figure of one cent.

Q. And the receipts of the Railroad Company from the Railway Transfer Company you are not yet prepared to give?

A. That was ready, but in pencil form only; I ask for further time on that. I wanted it run off in statement form so that you could have it in better shape.

Q. You were asked to ascertain whether or not the number of locomotives given—in Ex. 4, is it not?

A. Ex. 4, yes, sir.

Q. — included the locomotives held by the Railway Transfer Company under a lease.

A. Yes, sir, it does.

Q. And how many of such locomotives are there?

A. Four.

Q. So that of the locomotives used by the Minneapolis & St. Louis Railroad Company in the transaction of its business you have included four locomotives that are held by the Railway Transfer Company under a lease from the Minneapolis & St. Louis Railroad Company?

A. Yes, sir, the statement shows all locomotives owned.

Q. Now, is that same thing true with regard to any other equipment?

A. No, sir, it is not.

Q. No cars or other equipment of any kind?

A. No, sir; none whatever.

Q. Have you with you the original charter of the Minneapolis & St. Louis Railway Company?

A. I have a copy of it.

Q. Please produce it.

Witness produces printed copy.

A. In producing these documents I wish to repeat that, because of their scarcity, we have but one copy, and I was very reluctant in parting with them unless sure that we will get them back again, because they are very important because of that fact.

Q. We will take good care of them.

A. I hunted a long time before I found them, and I was made custodian of the contracts, deeds and records, etc., and they are important. I will give you everything.

Q. Thank you. Have you ascertained whether or not any amount of cash or other consideration was paid for the capital stock of the Minneapolis & St. Louis Railway Company outstanding at the time of the appointment of the receivers,—in 1888, was it?

A. Do you mean at that particular time?

Q. Yes, outstanding prior to the reorganization.

A. I was trying to find out the consideration of the issuance of that stock—that was the way I understood your question—but that would be considerably prior to the reorganization. That statement was not quite completed and I will have to ask for further time on that. We were digging away back there in the '70's, you know, to get that information; it takes time.

Q. Have you ascertained what the floating indebtedness of the Company was at the time of the appointment of the receivers?

A. No, sir.

Q. Have you procured a copy of the reorganization plan?

A. That will be here shortly; I will have it here this morning.

Q. Have you ascertained what item $133,185.50, on the first page of Ex. 7, refers to?

A. I ask for further time on that, also.

Mr. O'BRIEN: I don't think we ought to go on with the cross-examination at this time. I didn't imagine it was possible for Mr. Scott to produce all of this information in this short time, and he hasn't been able to do so.

WITNESS: I have some of it here that you still haven't asked for. I am quite sure I will be able to finish that this week, and I might possibly be able to do it to-day, but I wouldn't say positively that it would be ready. Some of it, some little thing may take quite a while to get the information. A copy of the lease between the Des Moines and Fort Dodge Railway Company and the Minneapolis & St. Louis Railroad Company is submitted for examination.

JAMES N. TITTEMORE,

sworn on behalf of Complainant, testified.

By Mr. BUTLER:

Q. Your name is James N. Tittemore?

A. Yes, sir.

Q. And what is your occupation, Mr. Tittemore?

A. Freight Traffic Manager Minneapolis & St. Louis Railroad and the Iowa Central.

Q. And how long have you been connected with that Company?

A. About four years.

Q. And in that position all that time?

A. Yes.

Q. Had you had railroad experience in traffic matters prior to that time?

A. Well, I have been engaged in the railroad business almost thirty years; fifteen years of that time in traffic and the balance in accounting and operating work, but the last fifteen years in traffic exclusively.

Q. And connected with what companies in the traffic department for the last fifteen years?

A. Well, I have been with the Iowa Central and the M. & St. L. roads twelve years, but came from the Iowa Central to the M. & St. L. four years ago, but am now freight traffic manager of both lines. Previous to that time I was with the Sioux City & Northern and Pacific Short Line and the Des Moines, Northern & Western.

Q. And where is your office?

A. Minneapolis.

Q. In the general offices of this Minneapolis & St. Louis Company.

A. Yes, sir.

Q. And has been during the last four years?

A. Yes, sir.

Q. And more than [illegible] of that?

A. Just about that.

Q. And, when were [illegible] before that time?

A. At Presto.

Q. Is there any [illegible] between the Iowa Central Company and the Minneapolis & St. L. [illegible] more than mere connecting carriers, [illegible] between common carriers generally the country over?

A. Simply a [illegible] operating connection.

Q. Have [illegible] officers?

A. The same [illegible], sir.

Q. The same general [illegible] officers of both companies?

A. Yes.

Q. I would like to have you [illegible] to the Master the location of both roads and the [illegible] of connection, by reference, if convenient, to the map [illegible] here in evidence and marked Ex. [illegible].

A. The Minneapolis & St. L. [illegible] road takes the line from Minneapolis west to [illegible] on the Missouri river, includes the branch running from [illegible] to Estherville; it also has a line diverging from that line at [illegible] which runs to Storm Lake that is called the Southwestern Division.

Q. From Winthrop, Minnesota, to Storm Lake, Iowa?

A. Yes. Then the [illegible] from Minneapolis, Minnesota, to Angus, Iowa.

Mr. Dunmett. Where are you now in Angus?

Witness. Right [illegible] to Fort Dodge, and just below Fort Dodge [illegible] just below Ogden, just outside of Des Moines. [illegible] and Fort Dodge is a part of the M. & St. L. [illegible] system. That runs from Angus into Des Moines, [illegible] Des Moines northwesterly to Ruthven, Iowa; and there we have a trackage arrangement with the Milwaukee [illegible] which permits us to use their line for our trains between Ruthven, Iowa, and Spencer, Iowa,

connecting up the Des Moines & Fort Dodge part of the road with the Southwestern Division. Then the Iowa Central line runs from Albert Lea, Minnesota, directly through to Peoria, Illinois, as the branches from Hampton, Iowa, to Algona, Iowa; Marshalltown, Iowa, to Story City, Iowa; Newburg, Iowa, to State Center; and New Sharon to Newton. Then there is the line running from Oskaloosa down to Albia; there we connect with the Albia & Centerville road that we have under an operating contract; it runs from Albia to Centerville.

Mr. DURMENT: That Oskaloosa down to Albia, is that a part of the Iowa Central?

WITNESS: That is a part of the Iowa Central. By good rights, in describing the Iowa Central, you should say from Albert Lea to Albia.

Q. There is a little piece of road from Fort Dodge to Tara, —what company?

A. That is under lease of the Illinois Central road.

Q. Who owns it?

A. The Illinois Central. The line from Watertown to Leola and from Conde to Leola is leased; it is a new company, but I don't know just what its financial relations are to the parent company, but we operate it as a whole, as a part of the M. & St. L.; so far as my department is concerned, I treat it exactly the same.

By Mr. DURMENT:

Q. All the lines you have given us are really Minneapolis & St. Louis, either owned or operated under lease or other arrangement, excepting the Iowa Central?

A. Yes.

Q. And the Iowa Central is from Albert Lea down to Centerville, as shown on this map?

A. Well, to Albia; we operate under contract from Albia to Centerville. That is the Albia and Centerville railroad.

Q. Oh, that is under contract with the Iowa Central?

A. Yes, sir.

Q. Down to Albia?

A. Yes.

Q. The Iowa Central from Albert Lea to Albia?

A. Yes, sir.

Q. With a branch continuing from Oskaloosa to Peoria, Illinois?

A. Yes, sir.

Q. And it also operates (the Iowa Central does) under a lease or some other arrangement from Albia to Centerville?

A. Yes, that is it.

Q. And that is all of the Iowa Central?

A. That is the Iowa Central, with the branches that I stated that are from Hampton to Algona, Marshalltown to Story City, Newburg to State Center, Grinnell to Montezuma and New Sharon to Newton; those are the branches.

Q. Those are the branches of the Iowa Central?

A. Of the Iowa Central. Possibly it might be well to state now, that our principal Chicago connection for the Minneapolis & St. Louis, is the Illinois Central, which is shown on the map, from Albert Lea to Chicago, in heavier lines.

By Mr. BUTLER:

Q. That is, passengers or business routed via your line from the Twin Cities to Chicago, go to Albert Lea on your line and thence to Chicago on the line of the Illinois Central Railroad Company?

A. Yes, but they are our exclusive Chicago connection. We treat it as one line when it comes to a traffic proposition.

Q. Now, you are and have been familiar with rates and traffic conditions obtaining on the line of the Minneapolis & St. Louis property and the other lines with which you were connected?

A. Yes.

Q. During several years last past?

A. Yes, sir, I think I am.

Q. And generally upon lines of railroad in this territory?

A. I think so.

Q. Does the Minneapolis & St. Louis Company do both local and interstate business?

A. Yes, sir.

Q. In each and all of the states which it touches?

A. Yes, sir.

Q. Now, with respect to operation, is it operated separately in each state or wholly as one line without regard to state lines?

A. It is operated as one system without regard to state lines.

Q. And with respect to the use of its movable property and equipment, do you know whether or not that is segregated to each state, or whether the same equipment operates in different states as the convenience of system operation may require?

A. It is used in all the states and in all the business just as the convenience and the discretion of the head of the operating department indicates.

Q. Do you have to do with the passenger traffic of your road?

A. No.

Q. Who is the principal passenger traffic man of the Minneapolis & St. Louis?

A. A. B. Cutts, General Passenger Agent of the road.

Q. You, then, are in charge of the freight traffic matters?

A. Freight traffic matters alone.

Q. Are you familiar with the schedules of rates here in question, to-wit, the class rates promulgated by the Commission of this state and which became effective November 15, 1906, and the legislative commodity rates of April 16, 1907?

A. Yes, sir, I have examined the schedules.

Q. Did you attend the hearing before the State Commission

when it had under consideration the making of the class rates which became effective November 15, 1906?

A. Yes.

Q. And did you at that time consider the effect of such rates upon your Company?

A. I did.

Q. Was there, during the same season, (1906) consideration by the Commission of commodity rates which were promulgated in the autumn of that year, (in December, 1906,) but which did not become effective, being superseded later by the legislative act?

A. Yes, there was.

Q. And do you recall a voluntary reduction of certain commodity rates, made by certain lines in Minnesota in the autumn of that year, I think in September, 1906, grain rates by the northern roads, the Great Northern, Northern Pacific and Soo, and about the same time certain reductions in coal rates?

A. Yes, I remember when the so-called northern lines reduced their rates voluntarily.

Q. In both coal and grain?

A. In both coal and grain.

Q. Now, can you explain to the Master, first, whether or not such voluntary reductions, made by the Great Northern, Northern Pacific and Soo roads, necessarily affected the rates on the same commodities on your line, and if so, why, and, generally, to what extent?

Mr. O'BRIEN: We desire to object to this as incompetent, irrelevant and immaterial; and I desire permission to ask one or two questions of the witness for the purpose of explaining the objection that we make and to base that objection upon and to base a further objection to this testimony upon.

The MASTER: You may ask the questions.

By Mr. O'BRIEN:

Q. The class rates provided in the order of the Commission

of September 6, 1906, were accepted by the Minneapolis & St. Louis Railway Company were they not?

Mr. BUTLER: We desire to note an objection to that as not being germane to any inquiry for the purpose of basing an objection to the testimony. I understood that the permission to cross-examine was to cross-examine for the purpose of making apparent the grounds of objection to the question.

Mr. O'BRIEN: That is exactly the object of the question. I have no hesitancy about explaining it if the Court desires. We claim that the acceptance and promulgation of those rates precludes an inquiry into their sufficiency, and we desire simply to show the acceptance and promulgation of those rates by the road and then to make our objection. We wont claim that those rates must not be considered in determining whether or not the subsequent changes in rates were confiscatory or not; we only claim at this time that there is no cause of action so far as the Commission's order of September 6th is concerned, and we desire to object to any testimony for the purpose of establishing the insufficiency of those rates.

Mr. BUTLER: I meant by my question to Mr. Tittemore, at the point where objection was made, to inquire concerning not the class rates referred to by Mr. O'Brien but the grain and coal rates which were voluntarily reduced.

Mr. O'BRIEN: But you commenced it with calling his attention to the class rates of the order of September 6th and his attending the hearing, following that up with a statement that immediately prior thereto there had been a reduction voluntarily upon the part of the northern roads. I understood your next question was for the purpose of showing that the voluntary reduction caused a reduction on the Minneapolis & St. Louis road.

Mr. BUTLER: Yes. Well, perhaps my questions were not clear, but I intended by the question at the place where you objected, to call from the witness an explanation whether or

not the voluntary reductions on the so-called northern roads necessarily affected reductions on the same commodities upon the road of this defendant Company, and if so why and to what extent. That is what I intended to call for.

The MASTER: I understood the question called for that; did it not?

Mr. O'BRIEN: Yes, sir, it called for that, and as that seems to be a direct step towards proving the insufficiency of the rates prescribed by the order of September 6th, I thought this was a proper time to make the objection.

The MASTER: Well, the objection will be noted. The witness may answer the question.

A. We could not help but accept them, but we protested against the rates and stated at the time that such rates, if put in effect on our road, would have a ruinous effect upon the revenue.

Mr. O'BRIEN: Why didn't you appeal?

WITNESS: I advised appeal.

Mr. O'BRIEN: Why didn't you appeal?

WITNESS: I didn't have the authority.

Q. Well, the Company did not appeal.

A. We were not alone in that, Mr. O'Brien. The question of competition decided that. Rates are one thing and business another.

Q. The Company did not appeal?

A. No, it did not appeal.

Q. It promulgated the rates provided in the order of September 6th?

A. Under protest, yes.

Q. It promulgated the rates provided in the order of September 6th, did it not?

A. Yes.

Q. And at what date were those rates promulgated?

A. November 15, 1906.

Q. And those remained ever since the rates?

A. The class rates?

Q. The class rates.

A. Yes.

Q. I mean the rates of the classes covered by that order.

A. Yes, sir.

By Mr. DURMENT:

Q. Was the Minneapolis & St. Louis Company bound by contract with the northern roads to regulate their rates according to the rates of the northern roads?

A. No; competition does that.

Q. Then if there was any necessity at all it was simply a necessity which resulted from competition for business? that is, if there was any necessity for the Minneapolis & St. Louis rates being regulated with reference to the rates of the northern roads, it was a necessity arising from competition for business and not from any contract relation or any legal obligation?

A. Unless you let me answer that question as I want to,—I don't want to answer it categorically.

Q. Well, I want an answer to it as I have asked it.

A. I wouldn't say that. That would not be giving you a correct answer.

Q. Well, I submit that I am entitled to an answer to that question.

A. It was not from any contract or legal obligation with the northern lines but competition (not only as regards to the rates but as to communities) compelled us to put in the same rates as the northern lines.

Mr. O'BRIEN: We desire now to object to any testimony intended to show the insufficiency of the rates prescribed by the order of September 6th, if such testimony is to be received for the purpose of basing a decree upon the same enjoining the maintenance of those rates, for this reason (and we only de-

sire to speak of it now so that it will be in your Honor's mind as the testimony goes in and as you come to consider these cases): The law of this state establishing a Railroad & Warehouse Commission has been sustained over and over again; that body has the right to inquire into the propriety of rates and to establish fair and reasonable rates; its orders only become effective after being promulgated unless the carrier affected by the order voluntarily promulgates the rates and accepts the order; it is therefore a tribunal somewhat similar to a board of public works in a municipality or a commission to condemn real estate, and its findings, it being a legally constituted body and tribunal, when acquiesced in—certainly when acquiesced in affirmatively by a carrier to be affected—must be binding and conclusive, as binding and conclusive as the final judgment of a court. It appears from the evidence now that that was what was done with regard to the order of September 6th, and in addition to that, the corporate entity, the directors and the general officers—who of course as between the public and the stockholders represent the stockholders—affirmatively accepted this order and promulgated and established these rates. They now constitute the only rates in the state of Minnesota for the transportation of the merchandise within those classes. The statutes of Minnesota of 1905 provide that no rate once legally established shall be changed except upon application to the board of Railroad & Warehouse Commissioners. There is no claim in the pleadings that that has been done in this case, and our position here is that as to the merchandise rates (those being the rates under the order of September 6, 1906) no cause of action is stated in the bill, and they cannot be considered, and that the demand made by the stockholders purporting to comply with the ninety-fourth equity rule should have been a demand upon its directors that they apply to the Railroad & Warehouse Commission for a change of these rates, and that the action of the stockholders

should have been in the nature of an action of mandamus by the stockholder upon the directors to compel them to so apply, and that therefore the allegations in the bill that the stockholders have demanded that these directors, six months after these rates had been put into effect, disregard them is a nullity, and that therefore, as to this branch of the case, the allegations in the bill are not sufficient, nor are the facts sufficient, to support any finding in favor of the Complainant.

Mr. DURMENT: As to the commodity rate, to which Mr. Butler's last question is specifically directed, we object that it is immaterial and that the only question which can be material, if any, is the fact that the rates were reduced; that the reason why is immaterial; and that the question calling for the necessity, as to whether it was necessary or not, cannot be answered because it appears from the witness' testimony there was nothing that the law recognized as a necessity, and it was a mere matter of business convenience, of competition for business.

The MASTER: You may proceed, Mr. Butler. Objection noted.

Mr. Butler's question was read as follows: Can you explain to the Master, first, whether such voluntary reductions made by the Great Northern, Northern Pacific and Soo roads necessarily affected the rates on the same commodities on your line, and if so why, and generally to what extent.

By Mr. BUTLER:

Q. And if you could more conveniently do so by aid of the railroad map of the state in connection with the Ex. 2, which is here, we will exhibit such a map to you.

A. The action of the northern lines did compel us to reduce our rates on the west end of our line, as the rates of the northern lines began to touch us, either at junction points or at points in contiguous territory; take, for instance, the rate at Madison here—

Q. That is in Lac qui parle county?

A. Yes, sir.

Q. On your line?

A. Yes. The rates at Hanley Falls were affected.

Q. Now, why at Hanley Falls? Make that perfectly plain.

A. Because the Great Northern Road changed their rate at Hanley Falls; that compelled certain rates to be changed on the Milwaukee road; that compelled us to make a reduction at Madison. The voluntary reductions were made from about Belview westerly, and we made no further reductions than were absolutely necessary. I think at Madison we made a reduction in grain of but one-half cent. At Hanley Falls, if we wouldn't make the same reduction that the Great Northern made, we couldn't get grain for our elevator, our man could not compete with the man on the Great Northern railway. Likewise at Madison, the competition between Madison and these points around it.

Q. That is Appleton?

A. Appleton and—Canby not so much, but farther west, when you get to Marietta, in competition with the Great Northern road, unless we had the same rates, the price of grain would—that is, if we had a higher rate at our stations, the price of grain would be higher naturally, the market price would be higher, and the grain would go to the stations on competing roads. We made such reductions voluntarily only as would protect us against the competition of the other lines. That would be true in coal; that would be true to a certain extent in lumber.

Q. And did you, as a matter of fact, in consequence of the voluntary reductions of the northern lines on coal and grain make reductions to meet such competition on both coal and grain?

A. —and lumber. We did.

Q. Did these voluntary reductions on the northern lines

in the autumn of 1906 necessarily affect any rates on your line other than rates on shipments moving wholly within the state of Minnesota; that is, did they affect any interstate rates?

Mr. DURMENT: That is objected to, first, because it plainly calls for a statement as to the necessity, which the law does not recognize at all as being a necessity; and, in the next place, that it wholly calls for a conclusion which affords no opportunity for the Master or counsel to know the basis of it; the question would have to be a statement of the effect and operation of the putting into effect of the reduction on the northern lines.

The MASTER: He may answer the question.

A. It did affect interstate rates; that is, rates on the same commodities affected by the voluntary reductions on the same commodities outside of the state. It would not affect lumber, but it did affect grain and coal. It affected interstate rates on grain to just that extent that it affected any state rate on grain.

Q. The voluntary reduction, I think, only covered coal and grain, isn't that true?

A. Yes.

Mr. O'BRIEN: It had no effect on lumber?

WITNESS: No, it had no effect on lumber.

Q. Now, with respect to the commodity rates fixed by the act of the legislature which are involved in this litigation, have you considered what effect they would have upon the rates on the lines of the Minneapolis & St. Louis Company?

A. They would have a—

Mr. DURMENT: Yes or no.

Q. Have you considered the effect?

A. Yes, I have considered it.

Q. Have you considered whether or not the same would affect the rates on shipments other than shipments wholly local to the state of Minnesota?

A. I have considered it.

Q. What is the fact in that regard?

Mr. DURMENT: The same objection as our last objection.

A. The interstate rate, for instance, on grain, would be affected exactly the same as the state rate; that is, to the same extent. If there was a reduction in the state rate on grain, there would be the same reduction on the interstate rate.

Q. Is that also true of the other commodities?

A. Well, that is true of grain and coal. The livestock rates were affected also.

Q. I call your attention to the exhibits already introduced marked Complainant's Exs. 14 and 15, which (Ex. 14) purports to be a statement showing the loss which the Minneapolis & St. Louis Railroad would have suffered had the Minnesota statute commodity rates been applied to commodity shipments handled by your road during the period from July 1, 1905, to June 30, 1906, and Ex. 15 the same information with respect to the month of September, 1907. Mr. Scott told us that the rates upon which the computations evidenced by those exhibits were made were furnished by you. Will you explain to the Master how the rates were arrived at? Of course the rates upon the strictly local business in Minnesota are prescribed by the statute; the other two are the rates to which I direct my question, to-wit, the Minnesota interstate business and other interstate business.

The MASTER: What do you mean by "other interstate business"?

Mr. BUTLER: That is the interstate business which does not touch the state of Minnesota.

The MASTER: Wholly outside?

Mr. BUTLER: Wholly outside of the state.

The MASTER: Between other states than Minnesota?

Mr. BUTLER: Yes, as for example, grain moving from northern Iowa to Chicago or coal coming up from the south-

ern coal places to Iowa points. I think those two illustrate.

Mr. DURMENT: I don't see how this witness can be asked to answer a question of that sort when it does not appear here what the computations are nor how they were made, upon what distances they were made, nor upon what quantities they were made, nor that all the figures that he gave were used. I submit that until they show the computations made and what rates were used,—

The MASTER: I suppose it is a preliminary question, isn't it?

Mr. DURMENT: Well, I don't see how it can be preliminary. Of course, if it once appears what the computations were and what the rates were and upon what quantities and distances, then it would be perfectly proper, perhaps, to show by this witness how he arrived at the rates; but it does not appear that he made up the computation and knows how it was made or how his figures were used or the distances the commodities were hauled nor the quantities of commodities hauled.

The MASTER: Objection noted.

Mr. BUTLER: Just a word, perhaps, will tend to some clearness. The commodity rates have not yet been applied. Mr. Scott produced these exhibits (Ex. 14, which covers a year, and Ex. 15, which covers a month in a later year,) which show, as he says, a comparison between what was earned on the present rate and what would have been earned if this rate had not been enjoined by this Court. To do that he took the actual business that actually did move during the period in question; first, that which was local strictly to Minnesota, and applied to that business the rate prescribed by the statute. The traffic manager furnished him tariffs upon which was computed the other two classes of items in the exhibit, to-wit, Minnesota interstate business and other interstate business. That new rate, we claim would have been compelled, had the rate strictly local to Minnesota been applied. Mr. Scott took the new

rate which would have been necessary, and applied it to the business which [illegible] did more. This witness and his department furnished the [illegible] rates, the accounting department, as I gleam the facts, extended the figures on the basis of the old way [illegible]. What I want to call out now is not so much the details of the rates, or the manner in which these interstate rates were affected, [illegible] we will come to the extent of that effect and establish the [illegible] upon which these computations of losses are made. [illegible] you will answer.

Mr. DURRENT: We submit that [illegible] there is no basis in the exhibits as yet or in the [illegible] before the Master upon which this question can properly be [illegible].

Mr. BUTLER: With respect to the basis, your Honor will recall that Mr. Scott was [illegible] in cross-examination, by Mr. O'Brien, whether the data from which these exhibits were made were in the possession of the Company and were available and was told they were and that they would be preserved and handed over to the other side at any time they desired to examine them for the purpose of [illegible], and Mr. O'Brien has reserved his cross-examination upon this subject and this class of subjects, that he may [illegible] these various bases.

Mr. DURRENT: [illegible] perhaps get my point. It is true, as he says, that Mr. Scott [illegible] these figures were made up from information [illegible] him by Mr. Titsmore's department, but it does not appear [illegible] he used, for instance, the rate which Mr. [illegible] furnished him for hard coal in making his calculations upon soft coal. It does not appear, for instance, whether he [illegible] applied the rates in the same way upon the outbound [illegible] and the distances; and the testimony of Mr. Titsmore [illegible] these rates were made up cannot be at all material [illegible] we have any hearing here until it is shown what the rates are and we can have an opportunity of finding out from him as to each particular one how he applied it. That is the [illegible].

The MASTER: The objection is noted. The witness may answer.

Mr. O'BRIEN: There is a further objection that we desire to note at this time, and that is that, insofar as this table attempts to show the effect which the enforcement of the statutory rates in Minnesota will have upon interstate business, it is incompetent, irrelevant and immaterial.

A. Well, we reviewed the abstracts.

Q. Now, explain both what you mean by reviewing and the abstracts, to the Master.

A. Well, we took the actual Minnesota state traffic for the year July 1, 1905, to June 30, 1906.

The MASTER: What exhibit are you looking at now?

WITNESS: This is Ex. 14-Scott, your Honor. The Auditor drew off a statement from the original way-bills, for instance, on soft coal, for that period of time. We applied the statutory rates—the rates that were sought to be put in by the State—to that tonnage, and we found out that it made a certain loss. In the case of soft coal, for instance, from Duluth to some point on our line in Minnesota (our line taking the soft coal say from Minnesota Transfer or Minneapolis) we figured that the loss—that the reduction, if you will,—on Minnesota state traffic on soft coal would fall entirely upon our railroad, for the reason that the railroad hauling the coal from the Head of the Lakes to Minneapolis charge us an arbitrary rate and have never been willing to reduce it under any consideration. Whatever reduction would be made in the statutory commodity rate, the statute rate on coal from Duluth to our points would be compelled from La Salle, Illinois, Peoria, Illinois, Farmington, Illinois, Manitowoc, Wisconsin, Milwaukee, Wisconsin, Chicago and all other Michigan ports. In the interstate case we figured our proportion of the loss or reduction. If the total reduction from Duluth to some point in Minnesota was 20 cents a ton, the rate would be reduced from Peoria to the same point 20

cents a ton, that would take whatever proportion the Minneapolis & St. Louis road should earn on that business; we made a proportionate reduction. In the case of other interstate traffic that applies entirely to intermediate points, points that would be affected by the reduction from Duluth, for instance, the interstate rate from Peoria to Minneapolis would be $1.40 on soft coal; if the rate was reduced from Duluth to Minneapolis 20 cents, that would reduce the rate from Peoria to Minneapolis 20 cents, making it $1.20. The $1.40 rate would be and was then the maximum rate from points as far south as Marshalltown, Iowa, I think, to Minneapolis. A reduction in the rate from Peoria to Minneapolis would reduce the rates along our line from Marshalltown, or thereabouts, to Minneapolis. We took that tonnage—exactly the tonnage— and applied the reduction to it and arrived at the third item. The same method of procedure was followed out along the entire line. When you come to wheat and flour (and, after all, the Minneapolis & St. Louis road can't live very well if we trifle much with our wheat traffic)—I have got a map here that I think will explain to the Master: Take the rate from Morton, Minnesota, to Minneapolis; the old rate would be, say 9 cents; the new rate would be 7.8 cents; the lines east of Minneapolis demand of us for hauling our business from Minneapolis or Minnesota Transfer to Chicago 7.5 cents per hundred pounds. That is an exact arbitrary. Our rate, the old rate, through rate was 16.5 cents based upon 9 cents and the 7.5 cents arbitrary, making 16.5 cents. Now under the new rate, it would be the sum of 7.8 cents and 7.5 or 15.3 cents. This map shows the stations on our road at which there are milling industries in competition with Minneapolis. All of the rates,—or rather the manufactories are in there and their business is based upon a rate proposition of 7.5 cents above the rate to Minneapolis. Our rates are all based upon that theory.

Q. That is, the Chicago rate?

A. The Chicago rate is based upon that theory. So that if you reduce the local Minnesota rate under that theory and practice that has grown up there and was there—has been there for fifteen years at least that I know of,—it affects the Chicago rate and the rate to intermediate Chicago points in exactly the same proportion as it does the local rate. In some cases it even does more than that. Take, for instance, when you come down here on our line from Norwood into Minneapolis and from Minneapolis south; at the present time, we have a minimum rate of 15 cents to Chicago,—

Mr. DURMENT: From Minneapolis?

WITNESS: No, from these intermediate points; that is, intermediate points south of Minneapolis. We figure that that minimum would be changed to 14 cents from all of this territory at least; from New Richmond the rate would be 12.4 cents as against 15, because the rate is reduced. We now get 7.5 cents, the difference between the 15-cent rate and what the Chicago road charges us to take it to Chicago, but under the statutory rate we would get 4.9 cents. That would be true of Albert Lea. That would have affected a tonnage in 1907 of 865,696 pounds. In coarse grains we would be hurt worse than that, because as you come south in Minnesota the jealousy of Chicago competition and the roads that lead there have compelled us in times past to narrow the differential down so that at times our rates are based on 5 to 6.5 cents over the Chicago rate, instead of, as in the case of wheat, 7.5 cents. Take Morton; where we get 8.5 cents now, out of a 16-cent rate, we would get but 6.5 out of a 14-cent rate under the new conditions. Take Sherburne, Minnesota: We would get 6.5 cents out of a 14-cent rate where we now get 8 cents out of a 16-cent rate. The old rate on oats and corn, for instance, would be 9.5 cents as fixed by the State of Minnesota, whereas the new rate would be 7.5. Then at Winthrop—well, we will

follow Sherburne: If the rate from Sherburne is reduced to 14 cents, the present rate from Huntington, Iowa, and from Estherville, Iowa, would be reduced to 14 cents, because we cannot charge a higher rate from Huntington and Estherville and that intermediate territory to Chicago than obtains from Sherburne. It would further affect away over in eastern Iowa. There is Rockwell, Iowa, that has a rate of 14.5, whereas we are compelled to put in a rate here of 14 cents from Sherburne. So far as our roads are concerned, it would affect every grain rate in Minnesota, and all of the grain rates on both our lines in Iowa.

Q. To what points?

A. To Chicago.

Q. And also to Minneapolis?

A. That has not been figured in this statement. There are other reductions which would follow that I am not speaking of because I didn't figure out how much they would amount to. We would save ourselves as much as possible. And these statements are based upon what we felt would be the actual necessary reductions if we had reduced to the figure that we would have to put in that day had the order become effective.

Q. What would have been the result to your traffic if the commodity rates prescribed by the statute for business wholly local to Minnesota had been applied only to that business and the interstate rates had not been readjusted to correspond to the changes?

A. I don't believe I understand the question, Mr. Butler.

Q. Suppose that the rates on shipments beginning in Minnesota and moving in Minnesota and ending in Minnesota had been changed in accordance with the act of the legislature and you had left all the other rates on your line as they were, what effect would that have had, if any, upon the business of the Company in the transportation of these commodities?

A. Figured upon the basis of the interstate, it would have

reduced our rates in Minnesota $90,422.66.

Q. I didn't make myself clear; I was not calling for the loss that would have resulted in Minnesota, but suppose your interstate rates remained high and unchanged and were not reduced, and the local rates were reduced as the legislature has enacted, what effect would that have had upon the traffic?

A. Well, that would have had a much worse effect, of course, than any yet put in the rates. A railroad company—its business is to get business, it lives on business. Low rates are, of course, better than no rates.

Q. Would it have resulted in a loss of traffic?

A. Great loss of traffic.

Q. Now, can you explain, by illustration if necessary, to the Master why that would be so? That is, how would it affect the volume of your business which moved to an interstate market, like Chicago, for instance, on grain?

A. Take Sherburne, Minnesota; that is a junction point with the Chicago, Milwaukee & St. Paul road; if the rate from Sherburne to Minneapolis be reduced, for instance, on coarse grain, and the Chicago rate be left the same, it might be figured if Minneapolis was a coarse-grain market that we would have the advantage, but exactly the opposite would obtain, because the Milwaukee Company and the other companies operating in southern Minnesota insist upon making the same reduction from this southern territory that any line makes from that same territory to Minneapolis. If we were compelled to reduce our Minnesota rate and could not protect ourselves by reducing and did not protect ourselves by reducing our interstate rate, we would be depriving ourselves of the greatest primary market on coarse grain in the world. That would put our elevator man at Sherburne to a very great disadvantage and would make the price that the Milwaukee man could pay for grain in the elevator on the Milwaukee tracks very much higher or that much higher as

their interstate rate would be lower than ours.

Mr. DURMENT: May I inquire, without interrupting: That is upon the theory that the Milwaukee and other roads that run to Chicago would reduce their interstate rates as well as their local rates, is it?

WITNESS: Well, yes; and further, in the case of wheat or coarse grain, we would be compelled to make the interstate reduction for the reason that all of these manufacturing establishments along our road which are noted here have their industries located there based upon a relation of the rate as between Minneapolis and Chicago. That relation is as fixed as the rate itself, and the traffic man himself has not felt like disturbing it.

Mr. DURMENT: Yes, but I had in mind the other proposition, whether in your comparison or explanation of the reasons why that result would follow if you didn't change your interstate rate, proceeded upon the assumption that the Milwaukee road and the other competing roads did change their interstate rate to correspond to the state rate or did not.

Mr. BUTLER: I had intended to reach those things.

WITNESS: Yes, that was one reason, but not the only reason. The reason that I give laterally would be exactly as potential as the other in the determination of the rate.

Q. Then, as I understand it, you mentioned two reasons which make necessary the readjustment of the interstate rates upon the reduction of the local rates, and, briefly, one is the relation of the markets, and the other is competition with carriers?

A. That is it.

Q. Now, make both clear by further explanation, or repetition, if that is necessary.

A. If it is not necessary I don't care to do it. I have tried to make myself plain; I presume I am a little dull in explaining. If the mill at Fairfax, for instance, when it located

there—I induced it to go there, I agreed with them that the rate on wheat or its product should not be greater at any time to the East than 7.5 cents above whatever the rate would be to Minneapolis,—that is, the rate to Fairfax, if you will, might be the rate to Minneapolis but the rate from Fairfax on the product would not be higher than 7.5 cents. The 7.5 cents goes, so far as we are concerned, to the eastern line, the balance would be what we get. Now, if that is reduced by statutory enactment, that loss falls directly upon the Minneapolis & St. Louis Railroad. It is true that we might get some haul out of the business, say from Minneapolis to Albert Lea, on a Chicago haul, out of a small portion of it, but the relation of the rate would be the same over our own road as it would if it went directly from Minneapolis to Chicago over the Burlington road.

Q. Now, what has been the fact, as a matter of practice, when grain rates in your territory in Minnesota have been reduced, have they always been attended by reductions of the interstate rates?

A. Always.

Q. And prior to the act of the legislature, had there in recent years or in your time in this property, been some reductions local to Minnesota, either voluntary by the Railroad, or by order of the Commission or by agreement with the railroads?

A. Strictly Minnesota?

Q. Yes, there was some adjustment five or six years ago?

A. I think there was; I was not here at the time. I don't remember that.

Q. You didn't have charge of that matter?

A. No.

Diagram marked Complainant's Ex. 20–Tittemore.

Q. So far, you have confined your statements as to the effect of interstate rates, these proposed legislative commodity

rates, to coal and grain, I think; the exhibits 14 and 15 also show the effect upon the revenues for the period covered on hard coal, lumber, coarse grain (I think you have spoken of that) flax, and the like, cattle, hogs and sheep.

A. Well, wheat and flour, coarse grain, flax and millet seed are practically covered by my explanation. The explanation with regard to soft coal applies practically to hard coal.

Q. Now, with respect to your soft coal: Is there competition in your territory between different coal districts, that is, the lake-and-rail coal and the southern coal?

A. Yes.

Q. And where does the southern coal come from that you handle into northern Iowa and southern Minnesota?

A. Some of it comes into Minnesota from Iowa mines, but most of it comes from northern Illinois mines or central Illinois mines.

Q. Now, if the rates be reduced in Minnesota from Duluth to southern Minnesota points on the all-rail coal, what effect does that have upon the traffic in coal from the South over your line?

A. It reduces our rate just that much.

Q. Why so? Why can't you reduce it from Duluth to Dunnell, Minnesota, and keep it up from down in Iowa, where you get your coal, up to Dunnell, Minnesota, or Estherville, Iowa, or Storm Lake, or any of those points?

A. Competition brings the reduction. We can't do that. Our rates are now fixed on a relation of selling coal from both points in the same market.

Q. That is an illustration of competition between markets?

A. Between markets, yes.

Q. And when you said competition it was not competition between carriers but competition between the two kinds of coal?

A. Competition between the two kinds of coal. The rate is

fixed with relation not only to the competition between the carriers but with relation to the quality of coal oftentimes in certain markets. That is also a factor. I never was in a coal meeting in the world that that wasn't a factor in the determination of what the rates should be. Cattle, hogs and sheep, or livestock included in this statement were figured on the same basis; that is, the same influences would work in that case that would work in the others.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. I want to call your attention now to Complainant's Ex. 15-Scott, which is a statement showing the loss which would have resulted to the Company in the month of September, 1907, had the commodity rates in question here been applied. Mr. Tittemore, are you able to arrive at any opinion as to whether or not September of that year was a fairly representative month of that fiscal year with respect to the movement of the commodities here in question?

A. I have an opinion.

Q. What is your opinion in that regard?

A. My opinion is that it is a representative average month.

Q. Prior to the making of these computations, did you select this month and recommend it as an average month?

A. I did.

Q. Now, from what considerations or data, how did you get at it?

A. In the first place, the commodities do not all move in one month; that is, there are periods of the year—months of the year—when the wheat moves more freely; other periods when stock might move more freely; other months when coal would move more freely; so we took the year, the twelve months and went over them carefully and selected September as the one that came closest to the average.

Q. In all the commodities under consideration?

A. In all the commodities under consideration. We then adopted the same method of computation that we did in the other cases.

Q. Have you with you a memorandum indicating what the loss would have been for the whole year of which September is one month, assuming it to be an average month with respect to these commodities; that is, with respect to the loss on strictly local business, Minnesota interstate business and other interstate business?

A. I have such a statement.

Q. What do you make the figures?

A. Figuring the twelve months of that year on the basis of September, 1907, computed as I have previously stated, we make the following losses: On Minnesota state traffic, $52,671.96; on Minnesota interstate traffic, $75,108.84; other interstate traffic, $30,954.36; or a total of $158,735.16.

Q. That, as I understand you, is the loss estimated on the basis you have described, which would have resulted in the fiscal year ending June 30, 1908?

A. Yes.

Q. Of which year September, 1907, is one month?

A. Yes.

Q. Ex. 16 is a statement showing the loss resulting to the Company on the class business and is confined strictly to local business commencing in the state and moving wholly within the state and ending in it, and does not, as I understand it, include anything for loss on Minnesota interstate business or other interstate business. Have you that exhibit before you?

A. I don't have that.

Q. At any rate, you didn't furnish any basis for the computation on the class rates,—any proposed rates or existing rates to estimate the interstate loss in Minnesota or interstate loss other than in Minnesota?

A. No.

Q. Now, Ex. 17 is a statement showing tonnage and earnings on merchandise and carload shipments moving at various class rates from Minnesota stations to Minnesota stations, loss in revenue, percentage of loss in revenue and average distance hauled for the month of October, 1907. From your knowledge of the traffic of the Company are you able to tell us whether or not the month of October, 1907, is a fairly representative month as respects the class rate business of your Company for that year; that is, the fiscal year ending June 30, 1908?

A. We used the same method of procedure in the merchandise in determining the average merchandise tonnage that we did in the case of the commodities, and we selected October as being the nearest average, and we applied the same method of computation to October, and multiplied that by 12 to get the loss for the year ending June 30, 1908.

Q. And, according to your best judgment, the month of October would be most fairly representative with respect to the class-rate business?

A. It proved itself to be.

Q. Have you made any memorandum of the loss that would have resulted for the whole year on the basis of the examination of the business for October, 1907?

A. I have.

Q. And what is the figure?

Mr. DURMENT: Before he answers that, let us have an understanding of this exhibit showing "Tonnage and earnings on merchandise and carload shipments moving at various class rates." Now, does that mean on merchandise in carload shipments?

Mr. BUTLER: It means both, as I understand it.

WITNESS: The class rates, Mr. Durment.

Q. Everything is covered by the class rates?

A. There are certain numbered classes and certain lettered

classes, and the lettered classes take in the carload, miscellaneous carload stuff, you know; that would be from A to E; the numbered classes would take from 1 to 5, and the 5th class would be carload. That is why that is put in that way.

Mr. DURMENT: That is, the carload as fixed by the classification?

WITNESS: That is it, yes.

Mr. DURMENT: And merchandise in carload as fixed by the classification?

WITNESS: Yes, that is what it means.

Mr. BUTLER: I thought I would hand to your Honor the rate itself.

Q. Now, you may give us the figure.

A. The total reduction or loss for the year, upon that method of figuring, for the year ending June 30, 1908, would be $34,055.76.

Q. That is on the class-rate business wholly confined to Minnesota?

A. Yes.

Q. Now, with respect to the freight rates generally, prior to the order affecting the class rates which became effective November 16, 1906, and prior to the legislative act of April 18, 1907, what, if anything, was the tendency with respect to rates, whether upward or downward?

A. The tendency was to reduce.

Q. And how long had that tendency been operative as to freight rates generally in the territory served by your Company?

A. It had been universal practically.

Q. It had continued for a long time, had it?

A. Yes; I can't remember when it wasn't otherwise.

Mr. BUTLER: This exhibit (showing exhibit to the Master) is a copy of the order, and you will see it is divided into 1 to 5th class and then A, B, C, D and E.

Q. Now, while we are on that subject, Mr. Tittemore, is it possible, as a practical matter, as applied to the local business of Minnesota, for your Company to enjoy the maximum rate prescribed by this schedule on all of its business? I have in mind the instances (if there are any such) where your Company may be the longer of two lines between two points.

A. That doesn't happen to be the case with our Company in Minnesota.

Q. You are the short line?

A. We are the short line.

Q. To the primary market?

A. Yes.

Q. It is the case with some roads on the railroad map?

A. Yes.

Q. And I didn't know whether it applied to you or not.

A. It doesn't apply to us.

Q. So then, there are no conditions of competition by reason of meeting the short-line rate that would compel you to reduce below the maximum allowed by the bill?

A. And I don't think so seriously; there might be an occasional one, but I don't recall it.

Q. Mr. Tittemore, can you tell us whether or not the reduction of the freight rates has the effect to increase the tonnage of freight moved upon your line?

A. Is that in relation to these rates?

Q. Yes, sir.

A. It does not increase the tonnage moved.

Q. I have in mind the rates here in question.

A. Yes.

Q. Now, with respect to the cost of doing business which is local to Minnesota, as compared with the average cost of haul on the whole line of your Company, from your experience as a traffic man, can you tell us, as a matter of opinion or fact,

whether there is any difference in the cost, and if so, in what direction is the difference?

A. Well, there is the difference in the cost of handling local and through business. There is the difference in time, which is money, of course; and there is the difference in fuel, which is money. Take a train of thirty cars of coal in the Minneapolis yard, going East to the Atlantic seaboard or for export; it is assembled, engine put on the train and starts out, makes its 108 miles to Albert Lea in one hundred and six hours; it makes the least draft upon the power of the Company, upon the station service, upon the men [illegible] there is less overtime in connection with that shipment. It handles our [illegible] maximum tonnage and a maximum [illegible] We get the most for the least; that is, we get the most service for the least pay, for the least expenditure. If that were a local train, we would hitch an engine on it, with at least one conductor and brakeman (brakeman); it would take at least twice as long. From the experience of our own Company, to make the same mileage. In several cases that I examined just recently, [illegible] which I think I have here, it took fourteen hours to [illegible] number of local trains while we were hauling the same number of through trains in six hours over the same mileage.

Q. Can you turn to the [illegible] that you have made upon that point?

A. I had the train [illegible] but my investigation showed, with an [illegible] than for thirty days, say from June 15th to July 15th—

Mr. O'Brien: Is this a matter of your own knowledge, Mr. Tittemore?

Witness: Yes, it is a matter of my own knowledge from the time-cards, from the [illegible] I didn't see it, but I got it from the records.

Mr. O'Brien: You are not in the operating department of the road, you haven't charge of [illegible]

WITNESS: Well, I have access to them, the same as any one else connected with the Company.

Mr. O'BRIEN: You are not in the operating department of the road?

WITNESS: No, but I am selling this transportation that I am talking about.

Mr. O'BRIEN: We object to it as incompetent from this witness.

Q. Mr. Tittemore, are the freight trains on your railroad numbered, known by number?

A. Yes.

Q. You were about to make some comparisons between the records of two trains for a period of time; what were the numbers of those two trains?

A. No. 96 and No. 42.

Q. Is either of them a local as distinguished from a through train?

A. Yes, they are distinguished in that way on the time-card.

Q. Which is a local train?

A. 42.

Q. And what was the other number?

A. 96.

Q. Are these both regular trains?

A. Yes.

Q. Are you familiar generally with the class of traffic carried by each, that is, whether it is local or interstate traffic?

A. I am absolute arbiter on our road, under the vice-president, of what our trains shall handle and how they shall handle it.

Q. And where does 42 run?

A. It runs between Albert Lea and Minneapolis.

Q. And 96?

A. Between the same points, (or St. Paul, if you will).

Q. What class of traffic is handled by No. 42?

A. It is a local traffic.

Q. Minnesota local business, for the most part?

A. For the most part, yes.

Q. Carload-lot business or less-than-carload-lots or both?

A. Both.

Q. No. 96 handles through business?

A. Yes.

Q. And what class of traffic, as intrastate or interstate, does 96 handle, for the most part?

A. It is through traffic, interstate traffic, traffic coming from beyond.

Q. These are both regular trains?

A. Yes.

The MASTER: 96 handles interstate?

WITNESS: Yes.

Q. They are both daily trains, are they?

A. Yes.

Q. And does the operating department preserve records of the movement of these trains and the amount of the tonnage handled by each?

A. Yes.

Q. And you have access to those records?

A. Yes.

Q. And they are still in the possession of the Company?

A. I think so; they were a day or so ago.

Q. And are available for use for the parties to this lawsuit?

A. Yes.

Q. Now, you have examined such records and are prepared to make a certain statement from them?

A. Yes.

Q. Now, what is that statement?

Mr. O'BRIEN: That is objected to as incompetent.

The MASTER: Objection noted.

A. I particularly noted the merchandise because that was as distinguished from the carloads, Mr. Butler; I haven't got the maximum tonnage of either train.

Q. What have you?

A. Well, I found that we handled 190 cars of merchandise in train No. 96, for that thirty days, which averaged 8600 pounds to the car; and in local train No. 42 we handled 118 cars of merchandise, averaging 6500 pounds to the car. In other words, it took 180 hours to handle No. 96, and it took 420 hours to handle No. 42. My inquiry was more directed, at the time, to the time consumed between the two trains. I don't mean to say that there are no conditions that are similar or that vary. I would be very glad to be brought out on the question, because I know just what I am talking about with regard to that thing but I don't know what is relevant here.

Q. Then, as I get the substance of your statement, it is this: The local train, which moves for the most part local business, in the period in question handled 118 cars, and the average tonnage per car was 6500 pounds?

A. That is it.

Q. And consumed 420 hours of a traincrew to do it; is that it?

A. That is the fact.

Q. And as compared with that, the through train averaged 190 cars, with an average tonnage per car of 8600 pounds and at the expense of 180 hours time for the traincrew?

A. That is the fact as I found it.

Q. Are you yourself able to establish with accuracy any comparison or comparative statement in the cost of handling local or interstate business as compared with the cost of hauling all? has your Company kept statistics for that purpose, so far as you know?

A. I don't know how far they have gone into that. I determine it for myself in my own way; I have to do that, or I

couldn't manage the traffic of the road intelligently.

CROSS-EXAMINATION,

By Mr. O'BRIEN:

Q. Mr. Tittemore, do I understand that the tables presented by Mr. Scott showing the earnings of the Minneapolis & St. Louis Company during a certain period and the effect of the rates either in force or proposed to be enforced were prepared under your direction?

A. Yes; I am referring to those spoken of by Mr. Butler.

Q. Exs. 14, 15 and 16–Scott, shown witness, and asked if those exhibits were prepared under his direction.

A. I don't just exactly know what you mean by "direction." They were ordered prepared, but the figures, the basis of computation, was fixed by me after the tonnage was submitted.

Q. The form of those exhibits was prepared by you?

A. No, the substance was approved by me; was figured out under my direction.

Q. They were prepared under your direction?

A. Yes.

Q. And according to your direction?

A. Yes, sir.

Q. And covering the periods which you directed?

A. Yes.

Q. Ex. 17–Scott shown witness. Was that also prepared under your direction as you have described?

A. Ex. 17, the basis for arriving at the figures was prescribed by me, yes. For instance, in this case of October, 1907, the selection of that month, after it was gone over by everyone else and their opinions given, I finally determined whether that month should be selected or not, whether it was the average month or not; it was my judgment in the end that determined the making of the statement and the computation, if that is what you want to know.

Q. Exs. 14, 15, 16, and 17 do not purport to contain a his-

tory of any actual transaction, do they?

A. I want to answer your question, I don't just get it. It does; it is the exact statement of the—the basis is an exact transaction.

Q. Well, do those exhibits contain the actual receipts of the Minneapolis & St. Louis Railway Company upon all of those theories during the periods covered by the exhibits?

A. No.

Q. Then they do not purport to be a tabulation of the actual transactions of the road?

A. Well, there is a great deal of actual fact in the statements.

Q. Yes, that actual fact consists of the tonnage, does it not, during the periods covered by these tabulations?

A. Yes.

Q. Aside from that tonnage, these statements contain no tabulations of actual transactions?

A. They contain an actual fact.

Q. Won't you answer my question?

A. Well, I am trying to do the best I can, Mr. O'Brien. They do contain an actual fact of the application of a rate that was ordered put in to an exact tonnage, and the computation discloses a certain loss that would have been actual had that rate been applied.

Q. The rate was never applied?

A. No.

Q. Consequently—

A. Not in the commodity case.

Q. Consequently this is not a tabulation of any transaction that actually took place,—Ex. 14?

A. No, not that would be actually tabulated and the money turned into the treasury.

Q. But the tonnage which is given in Ex. 14 as a basis for your calculation is the exact tonnage hauled by the road during

that period, during the period covered by this statement?

A. Yes.

Q. Aside from that the statement is a calculation?

A. Yes.

Q. That is also true of Ex. 15, is it not?

A. Yes.

Q. Now, neither Ex. 14 nor Ex. 15 contains a statement of the tonnage, does it?

A. No.

Q. Consequently there is no statement in either of those exhibits which is a statement of a transaction which actually took place?

A. There is such a statement extant, though.

Q. Oh, there may be, I am talking of what we have here on the table; we are playing with these cards now.

A. There is no statement of tonnage in there, no.

Q. And a complete statement which could be analyzed would require a statement as to the distance which the tonnage was hauled, would it not?

A. No, that didn't enter into those statements at all, it was not considered.

Q. Well, isn't the rate different for different distances?

A. Yes, but that doesn't figure in that case.

Q. Why?

A. Because so far as the Minnesota rate, the distance rate was concerned, that was fixed; that is the basis from which we started. Now, there was no other distance rate involved. It was the relation of that rate to other rates both inside of the state and outside of the state.

Q. Do you mean to say, Mr. Tittemore, that you could determine the difference in the revenue which would be derived from the operation of the commodity rates from the revenue actually derived under your present rates, without taking into consideration the distance the various commodities were hauled?

A. I could do that, if I understand your question correctly, I could do that; I did do it.

Q. Well, how?

A. I made the statement in the case of wheat: The rate at our milling points, the interstate rate, is based upon 7.5 cents above what the rate would be to Minneapolis. The amount that we pay for hauling the wheat or its product from Minneapolis to Chicago or East is an arbitrary of 7.5 cents. Now, if the distance rate in Minnesota is changed, it changes the relation and changes the earnings of the M. & St. L. road just to the extent the relation is disturbed. Now, I did not take the distance hauled into consideration, for the reason that the State Railroad and Warehouse Commission had fixed that as an arbitrary rate for a distance haul, but it had no effect upon the interstate transaction, the distance was not considered at all,—distance tariffs do not amount to anything in traffic and never did.

Q. Then I understand you to claim that you could take the earnings (the freight earnings) of the Minneapolis & St. Louis road for a certain period, the actual earnings, the actual tonnage, disregard the distance that the tonnage was hauled and determine from the gross revenue and the gross tonnage, by a comparison with the proposed rate, what the loss would be under that rate?

A. I don't quite understand the question, but I will try to answer it just as I think that you mean it to be asked. I don't quite get the drift of it, but I will say this, that if the Minnesota Railroad Commission will fix me a distance tariff rate between points in Minnesota and Minneapolis on grain, knowing the tonnage of the crop to come, I can figure out for our board of directors what their earnings will be very closely; for the year I mean.

Q. But in doing that, will you not take into consideration the distance that that grain will be hauled and the revenue

which you will derive from hauling the grain a certain distance under the distance tariff?

A. Competition, not business, fixes our rates. That is the trouble.

Q. Competition has nothing to say to the question of what revenue will be derived under a certain distance tariff, has it?

A. But it affects all the other rates because it fixes the relation which makes the competition.

Q. In order to determine the difference between two amounts, you have to ascertain each amount, do you not?

A. I do that by the relationship of the rates.

Q. Can you ascertain the amount of revenue which your road or any other road would earn from a given tariff—would earn from the tariff prescribed by the order of the Railroad and Warehouse Commission—with reference to the merchandise rates or the act of the legislature of April 18th, without taking into consideration the distance which the commodities were to be hauled?

A. The distance that the commodities were to be hauled wouldn't make any difference to me, that is, I wouldn't consider that, but I would have to consider the distance-tariff rate fixed by the Commission as my basis from which to figure. You see that is what disturbs my relation. That produces the friction which brings the competition that fixes the rate in my mind. I do not consider, Mr. O'Brien, the distance hauled, that is, the expense for hauling a car a certain distance; that does not enter into my mind.

Q. I hand you the act of the legislature of April 18, 1907. What, under that act, would be the greatest sum allowed for transporting 100,000 bushels of wheat?

A. The tariff is not made on that basis.

Mr. BUTLER: Do you mean at Duluth?

Mr. O'BRIEN: That is what I want to know.

Mr. BUTLER: Let me make a suggestion.

WITNESS: I will figure it for you.

Mr. BUTLER: Mr. Tittemore is referring to interstate matters and you are referring to local matters.

Mr. O'BRIEN: I have not got outside of the state yet.

WITNESS: Could I figure an illustration by carloads?

Q. No, if you will answer my question,—can you answer it?

A. Why, anybody can figure that out from this rate if they take the time, but I am not very good at figures, not that kind of figures. If you will let me take the time I will figure it, but that is not the way we figure our rates.

Q. Well, can you, with no further information than that, tell me what the revenue will be derived from the carriage of 100,000 bushels of wheat?

A. Yes.

Q. All right, do it.

A. Well, give me a piece of paper and I will figure it for you, but I prefer you to put your question as to a carload or something of that kind because it is more practical for me. We do not make our tariffs that way.

Q. How many bushels in a carload?

A. I don't know and no one knows. You would have to go to the Auditor's office. I am making rates, not making the price of wheat. If you are going to take me into the price of wheat you are getting me beyond my sphere, out of my place. I have stated the rate that I made, the rates of my road on wheat, Mr. O'Brien, based upon the rate that would be fixed in the state of Minnesota. Now, if I could make that clear to you, I would figure it entirely from my Company's standpoint upon a tonnage basis; for instance, if the rate on wheat from Madison to Minneapolis is 9 cents—

Q. You could put it into carloads if you like, that doesn't make any difference.

A. You have got 100,000 bushels of wheat, have you?

Q. Yes. Now, what is the weight of that?

A. 60 pounds to the bushel, I believe. If there are six million pounds to 100,000 bushels you have got 600 cars, practically, haven't you? You have got 600 cars of wheat. Where is the wheat to be moved from?

Q. That is just what I wanted you to tell me. (Laughter.)

A. Well, my abstract upon which I used these rates told me exactly, I had exact facts, it was not a hypothetical question.

Q. You told me you took no distances into consideration?

A. I didn't take any distances into consideration.

Q. Well then, don't do it now.

A. I have got to have some place.

Q. So I thought.

A. But the rate from Madison is not fixed always to Chicago or Peoria by the distance we make the rate from Madison to Minneapolis. That is what I tried to make plain, Mr. O'Brien.

Q. What I asked you was, in getting at your actual revenue —and I really am not trying to—

A. No, I don't think you are.

Q. —trap you in the slightest extent—

A. No, I don't think you are. I have got to the point now where I can figure out the problem if you will tell me where the wheat started from.

Q. Yes, but that is the very thing.

A. I suppose it started from the points I illustrated.

Q. No, you said distances make no difference.

A. No, it doesn't, not in the determining of the losses that I figure on these statements.

Q. Now, let us go back. You cannot solve the problem without a statement as to where the wheat is moved from and to?

A. I didn't solve those statements there without that information.

Q. You can't solve this problem without a statement of where the wheat is to be hauled from and to?

A. I can't solve any problem without factors.

Q. In arriving at the exact revenue derived by the Company during the periods covered by these tabulations you ascertained all of the facts connected with it, did you not?

A. Yes.

Q. Now, in making your estimate as to the loss, did you compute the new rates for the same distance and upon the same haul and upon the same quantity?

A. If you leave that distance out, yes; I didn't take distance into consideration.

Q. You didn't take distance into consideration?

A. Why, it was in there, but I didn't consider it for the reason that the Railroad & Warehouse Commission of the state had considered that and fixed the arbitrary from which I had to make all my other deductions and computations.

Q. In other words, you didn't take the rate prescribed by Chapter 232, Laws of 1907, but you took your best judgment as to what those rates would yield?

A. No, I didn't do that.

Q. Well, what rate did you take?

A. I took the rate prescribed in here and applied it to the stated tonnage.

Q. Have you in your possession a statement showing the number of tons of soft coal hauled upon the Minneapolis & St. Louis road between July 1, 1905, and June 30, 1906, giving the distances for which that coal was hauled and the revenue derived from each haul?

A. Have I it in my possession here?

Q. Anywhere.

A. Why it is in our possession, yes.

Mr. BUTLER: I desire to state, for counsel's benefit, because I think there seems to be some misapprehension, Mr. Scott testified that these tables were made up by applying the proposed rate to the actual hauls of the old business from

station records or from way-bills, as for instance, on soft coal moved from Minneapolis to Norwood on a certain date, a certain amount, it earned the rates then in force; these rates have not gone into effect, so they applied the new rate to that business, and so on, detail by detail, through these thirteen months, on all the traffic that actually moved. These records, Mr. Scott testified, in answer to Mr. O'Brien, (the abstracts of the records and compilations) are in his possession, will be preserved by him and subject to the examination of counsel on the other side or any of their representatives; and that I understand to be the case as to the merchandise used those thirteen months, in each instance the actual way-bill or its equivalent was examined and the two rates applied—one which was in force and one which would have been in force—and the comparison made. Part of the old rate to the new business and the new rate to the old business in the merchandise cases and the proposed rate in the commodity to all of the rest. Now, I say that in the hope that it may simplify an understanding of what I am informed and understand to be the basis upon which Exs. 14, 15, 16 and 17 have been made.

Mr. O'BRIEN: That is exactly the understanding I have obtained from Mr. Scott's testimony, and it seems to be entirely contradicted by Mr. Tittemore's testimony.

Mr. BUTLER: No.

WITNESS: Then I didn't understand your questions, Mr. O'Brien, because those records are extant. There is not a figure, for instance, that I have used—

Q. Have you got Ex. 14 before you?

A. No.

Q. Well, take Ex. 14.

A. Now, the tonnage—

Q. Just wait a moment. The first item on Ex. 14 is soft coal, Minnesota state traffic, $4,402.18; loss $1,429.52; per cent of loss 32.47. Now, as I understand it, $4,402.18 was the

actual amount earned during that period and received by the Minneapolis & St. Louis Company?

A. No, that is not what that item is. That is the actual tonnage moving between certain points with the new rates applied.

Q. It is not tonnage at all, it is dollars there.

A. Well, but the figures upon which that is based are the figures that Mr. Scott is preserving and which you can have the right to examine.

Q. Is that first item the actual earnings or the earnings which would have been?

A. The earnings which would have been.

Q. Then there is no statement on Ex. 14 at all as to what the actual earnings were during a certain period?

Mr. BUTLER: Well, if you add the loss to that result—

A. Yes, that gives you the figure that they actually were the year before.

Q. There is no statement, then, upon Ex. 14 as to what the earnings were during that time?

A. I can't answer the question because I don't see that I understand it.

Q. Is there a statement upon Ex. 14 showing what the earnings from the carriage of soft coal within the state of Minnesota between stations in the state of Minnesota upon the Minneapolis & St. Louis railroad were during the period from July 1, 1905, to June 30, 1906?

A. No, they don't appear there.

Q. Are you prepared to say that that is not shown in the first column, the first item?

A. The statement says that this shows the loss which the Minneapolis & St. Louis railroad would have suffered had the Minnesota statute commodity rates been applied to commodity shipments handled by that road during the period from July 1, 1905, to July 30, 1906, inclusive.

Q. Mr. Butler suggests that the aggregate of the first two columns would furnish the information.

A. You would have to have the original statements upon which these deductions are made to find out what the actual earnings were for the actual tonnage moved, which is the basis of the computation.

Q. As a matter of fact, that suggestion is not correct, is it?

A. It is absolutely correct.

Q. Well, now, will you please ascertain what percentage of the sum of the first two columns the second column is?

A. I didn't subscribe to that, I didn't say that.

Q. That is a mistake?

A. Well, Mr. Butler said that. The rate, the factor used—there are some of the factors not here.

Mr. BUTLER: What I stated was this. It was stated, as I understood it, that the figures there represented what the earnings would have been under the new rate, also represented the loss. Manifestly the loss on these figures would have been the other.

The MASTER: I understand it is the result from an average; in other words, if you were to divide this by 12 you would get the rate for the average month?

Mr. O'BRIEN: No, that is the whole year, your Honor.

WITNESS: Yes.

The MASTER: Yes.

WITNESS: Your Honor, we took the actual tonnage hauled for a year, the actual tonnage from the way-bills.

The MASTER: Oh, yes.

WITNESS: That was audited, that had been taken into account. Then we took the new rate and applied it to that tonnage to find out what our loss would have been had the new rate been applied to that business. That was the best and only way we could get to determine how badly we would be injured or how much benefited.

The MASTER: Well, then, you took the actual amount that you did receive for—

WITNESS: The actual tonnage.

The MASTER: The actual tonnage?

WITNESS: Yes.

The MASTER: What did you get for that tonnage? That is what we are trying to get at, isn't it?

WITNESS: That is what you are trying to get at, and it is what is shown in the figures that Mr. Scott has preserved in his office, but these are just the deductions from them.

The MASTER: Then we haven't enough data here, have we? We can't determine here what the revenue was for that tonnage?

WITNESS: Not unless you take my word for it.

Q. Well, Mr. Tittemore, please examine Ex. 14 again and tell me whether or not the first column there does not represent the actual earnings from those different commodities.

A. It is a statement of exactly what it purports to be at the top. It does not.

Q. Well, now, isn't the second column, for instance the first line, the second column, 32.47 per cent—doesn't that exactly correspond with the first line of the first and second column?

A. That would be the percentage of loss provided the actual transaction had taken place.

Q. Well, it is an actual transaction so far as those statements are concerned, so far as the first column is concerned, is it not?

A. So far as the tonnage upon which it was based.

Q. So far as the revenue was concerned?

A. I don't think that. That is, it was never audited, never put in the books. It is what would have been put there had that transaction been a fact and actually transpired.

Q. Does this first column not purport to be the revenue as

derived from abstracting the way-bills for that traffic during that time?

A. No.

Q. Well, what does it purport to be, then?

A. Well, this is the earnings that—

Q. Don't say "this."

A. Well, the $4,402.18, or the amount shown in the first column, would have been the earnings earned by the Minneapolis & St. Louis road under the new rate based upon the tonnage that moved during the period from July 1, 1905, to July 30, 1906, which would have been a loss of $1,429.52.

Q. Well, now, Mr. Tittemore, you are absolutely wrong in that, and if you will examine the percentage that is given you will see that you are mistaken in that, because that would give a total of actual earnings of $5,831.70, and $1,429.52 is not 38.32 per cent of that amount.

A. The loss would have been exactly what I stated it would have been under that hypothetical case.

Q. Yes, but it is of some importance to know what your exhibits mean and what they purport to state.

A. I have stated what they are so far as I can.

Q. Do you still—

A. I still insist on my position until I examine further the records that we have told you are open to you.

After consultation with Mr. Butler the witness said: "Those are the actual earnings."

Q. I thought so. The first column, then represents the actual earnings during that period?

A. Yes.

Q. The second column represents what you claim would be the loss?

A. Yes.

Q. If the commodity rates had been applied?

A. Yes.

Q. And the third column are the percentages?

A. Yes.

Q. Now, will you take the second line of Ex. 14. That first column contains the actual earnings from interstate business in which part of the haul was in Minnesota?

A. Yes.

Q. You assumed in ascertaining what loss there would be on account of that business that the enforcement of the Minnesota rates would compel a change in interstate rates?

A. Yes.

Q. And in assuming the amount of that change you used your own judgment?

A. Well, yes, I used my own judgment but not at random, I had a reason for it.

Q. So that the loss figured there was not based upon any rate that had ever been promulgated or proposed by anybody?

A. Well, it was figured—

Q. Please answer my question.

A. Well, the rate had not been promulgated, no.

Q. Or proposed by anybody?

A. No.

Q. And in that you simply used your own judgment and experience?

A. My own judgment and experience had very little to do with it because the competition and the relationship of the rates fixed my judgment.

Q. With regard to the third item in each column the same is true as with regard to the second, is it not?

A. Yes.

Q. That computation was not based upon any rate that had ever been promulgated or proposed by anybody, but was your judgment as to what the effect would be of the enforcement of the rates in Minnesota?

A. Taking competition, experience and the relationship of

the rates into consideration, yes.

Q. And there are no records or books or way-bills or receipts in the office of the Minneapolis & St. Louis Railway Company, or anywhere else, which can be used to check off these two items, are there?

A. There was an actual interstate tonnage hauled which was the basis for the rates.

Q. Yes, but there is no tariff or schedule of rates, or anything of that sort, which can be used for the purpose of demonstrating whether your estimates are correct or not?

A. Oh, yes, there are such figures.

Q. What do you mean by that?

A. Well, I mean to say that if the rate from Madison, Minnesota, to Minneapolis, is fixed, then the rate to Chicago, Peoria and all points East would be fixed on the same tonnage.

Q. Yes, but it would be fixed in your mind, there is no tariff-sheet giving those rates anywhere, is there?

A. By a little process of subtraction or addition the relation is there.

Q. There is no tariff-sheet anywhere fixing those rates?

A. Oh, yes. Not fixing the difference, no.

Q. Not fixing the difference?

A. No.

Q. Not fixing the rates which it is necessary to compute before you arrive at what you claim to be the loss?

A. Well, there is the rate that I used as a basis; that is in the tariffs.

Q. Oh, yes, the rate that you used as a basis, but the actual rate used by you is not in existence anywhere?

A. I want to answer your question, Mr. O'Brien, I have nothing to hide.

Q. Why, I am sure of that.

A. No, I want to answer your question exactly as I understand it. I did use a rate. I used the rate into Minneap-

olis and then I took my tariff-sheet from the same point to all other points. I got the tonnage from the Auditor, he got it from the way-bills, we examined them, then I applied the difference that would be fixed by the old relationship of rates in which my judgment said would bring down the interstate rates to the same extent they had the local rates and I applied that rate.

Q. Well, now, is that rate which you applied for the purpose of determining the difference in the earnings in any schedule or in any tariff-sheet, or was it a rate which you arrived at in your own mind as the rate to use?

A. Well, it was a rate that I arrived at in my own mind, but it would have been put in the tariff-sheets.

Q. Well, say that if I were competent (which I am not) to figure rates, there is no tariff-sheet in existence which you could hand me now for the purpose of computing the rate upon the two last items in each division of Ex. 14 when you undertook to determine the loss which the road would sustain if the commodity rate were in force?

A. I could have handed you a tariff with a certain rate in it and I would have said to you that the interstate rate would be a certain rate under that after a certain time; I could not give you the physical sheet but then I could give you the transaction.

Q. And that is also true with regard to Ex. 15?

A. Yes.

Q. Ex. 17 shown witness. That exhibit was prepared by Mr. Scott under your direction, also, was it not?

A. Yes. I never saw the exhibit after it was prepared and have not analyzed it, as I said to Mr. Butler.

Q. Ex. 16 shown witness. That exhibit was prepared under your direction.

A. Yes, but not afterwards examined by me.

Q. But it is in the form prescribed by you?

A. Yes.

Q. For the purpose of this case?

A. To arrive at the loss, or the effect, if you will.

Q. Won't you describe the difference between the freight to be carried in carload lots under the order of the Commission of September 6, 1906, and the freight to be carried under the rates prescribed in Chapter 232, Laws of 1907?

Mr. BUTLER: Do you mean the different articles of freight?

Mr. O'BRIEN: No, what is the reason there is a different classification.

A. That is, what is the basis of the classification of freight?

Q. Yes.

A. That is a big question.

Q. I didn't mean that, but I meant is there any difference in the freight except a different classification for convenience.

A. So far as the statements are concerned?

Q. So far as the railroad customs are concerned.

A. Well, of course, distance tariffs grow; they are not made. Commodity rates meet necessities. The railroad builds into a country not to rob a hen's nest or to milk a cow, but to go to a definite point for a definite large tonnage. You go to a large coal district—

Q. I don't think you get my question, Mr. Tittemore. Probably I can save some time by asking you questions. The railroads operating in Minnesota have adopted a certain classification for the greater portion of their freight which is known as the Western Classification, have they not?

A. Yes.

Q. And within that classification are included most kinds of merchandise?

A. Yes.

Q. The classes are 1, 2, 3, 4 and 5 and A, B, C, D and E?

A. Yes, sir.

Q. All classes above 4 refer to carload lots?

A. The first four are less than carload lots.

Q. The first four less than carload lots, the balance are carload lots?

A. Yes.

Q. From time to time it has been the custom to take out of this classification certain commodities and give a special rate to that commodity, has it not?

A. Well, not always take them out, they are hardly ever in.

Q. They were either left out of the general classification or subsequently taken out?

A. A special consideration makes them a special rate.

Q. And amongst the commodities so left out of the general classification are coarse grains, flour, lumber, cattle, sheep, hogs, hard and soft coal?

A. And wheat.

Q. And wheat?

A. Yes.

Q. The order of September 6th, of 1906, was confined to the classes that I have described as used by the Western Classification?

A. Yes.

Q. Is that true?

A. I think it is.

Q. And therefore that order had no effect upon these commodities each of which had a separate tariff of its own?

A. No.

Q. Chapter 232 referred exclusively to commodities which were outside of the Western Classification?

A. Yes.

Q. But insofar as the commodities themselves were concerned, there was no more reason why wheat should be left out of the classification than that it should be put in, except as a matter of convenience in accounting?

A. We had nothing to do with the keeping of wheat out of the classification.

Q. Well, what was the reason for having wheat kept out of the classification?

A. Well, it is a preponderating commodity, if you will. It must have special consideration. There is the milling-in-transit in relation to it, it has a much larger relation to the whole question, and there is more of it.

Q. But insofar as the effect of a change of rate was concerned, having particular reference to its effect upon interstate commerce rates or other matters, there is no difference between the rates upon commodities than there is upon the rates upon merchandise, is there?

A. Oh, yes.

Q. There is?

A. Yes, in wheat.

Q. You think then, that a rate on wheat prescribed between stations in the state of Minnesota might have an effect upon interstate commerce, but a rate upon sugar would not have had, assuming that sugar was hauled in the state?

A. It would not, in the state of Minnesota, have the same effect.

Q. But assuming that it was hauled in the state of Minnesota it would, would it not?

A. Assuming that sugar was wheat it would.

Q. Do you mean to say that the rates fixed upon commodities by Chapter 232 will have a different or other effect upon the rates for interstate commerce which the rates prescribed by the order of September 6th will not have?

A. So far as our road is concerned, Mr. O'Brien, the commodity rates have a much greater effect upon our revenues than the order of the Commission.

Q. I am not speaking of the amount of the revenue, I am speaking of the difference in the rate.

A. Yes, the difference, the effect upon the rate—

Q. The percentage of the rate?

A. Yes.

Q. The percentage of the rate?

A. Would be greater in the case of commodities on our road than merchandise.

Q. Then the merchandise rate may be applied to the traffic within the state of Minnesota without any extra-territorial effect?

A. It can be applied to the business on our road in the state of Minnesota without having the same effect that the commodity rate would have.

Q. Would it have any effect?

A. Oh, yes, it would have some effect but no serious effect.

Q. It would have some effect?

A. The effect of the reduction in itself.

Q. I am not speaking about the reduction in itself, but would it have any effect upon interstate tariffs? I am not talking about interstate revenues.

A. So far as our road is concerned, the effect would not be serious in the merchandise.

Q. Would it have any effect?

Mr. DURMENT: That is, on interstate traffic.

A. It would not have much effect on it. We could ward against it.

Q. Would it have any effect, or compel a change in any interstate rate?

A. I am not prepared to say that it would not.

Q. Its effect would not be relatively the same as would the effect of Chapter 232?

A. No, not to our road.

Q. Would the operation of the two-cent passenger mile have any effect upon your interstate passenger rates?

A. Yes.

Q. But in the case of the merchandise you say it would have no effect?

Mr. BUTLER: He didn't say that, Mr. O'Brien.

A. I say that it would have no serious effect, I think we could ward against any serious effect. I don't think that it would be serious so far as our road is concerned.

Mr. DURMENT: And the witness did say that he couldn't say it would have any.

WITNESS: Wouldn't have any. That is what I said, Mr. Durment.

Q. But on many of the roads in the state it would have an effect?

A. I think so.

Q. And I understood you to say this morning that when the rates of any other road were affected your rates were affected?

A. Not when we are the short line between points.

Q. Are you a short line between the Twin Cities and Chicago?

A. I was speaking of Minnesota.

Q. Well, I am not, now.

A. No, we are not. Competition fixes that rate.

Q. Competition does fix that rate?

A. Yes.

Q. So that when the rates between here and Chicago upon the other lines are affected they are affected upon your line?

A. Yes.

Q. Consequently if the merchandise rates do have an extra-territorial effect upon the other lines of road, your competitors, they would have an effect upon your line?

A. I don't think they would in this case.

Q. Don't think they would in this case?

A. No.

Q. You could give the reason for that, I presume?

A. Well, with the short line to Minneapolis and St. Paul, the Twin Cities,—

Q. From Chicago?

A. No, but into St. Paul and Minneapolis, which is the basis from which this influence extends and sympathy extends, that brings about the competition. There may be no competition between two shipments of hats, but there may be a great competition between two shipments of wheat, that is the thing that leads up to the transaction. The competition is already felt before you get the stuff into the cars, before you move it, and that is what fixes your rate. It don't fix a distance-tariff rate, but it does fix commodity rates.

Q. Then interference with the rates is not so very important after all?

A. It is the one serious question with me.

Q. The merchandise rates have been in force since the 15th of November, 1906?

A. Yes.

Q. This case has been pending since the 30th day of May, 1907?

A. Yes.

Q. You could have presented here exactly what your revenue has been during that time upon merchandise rates, what changes have been made in your tariffs outside of the state of Minnesota and presented a complete history of a period of much more than a year, nearly two years, if you had seen fit to do so?

A. If I had thought the results in themselves serious enough to our road I should probably have done that.

Q. Don't you think it would have been more valuable than a calculation made under your direction as to the difference between your actual interstate rates and an imaginary rate adopted by you for that purpose?

A. Well, now you are referring to the commodity rates.

Q. I am referring to your presentation of tables here.

A. Well, your table, your merchandise table, presents an actual transaction, whereas the other is problematical.

Q. Don't you think it would have been more valuable in showing what the effect of the reduction of the rates would have been?

A. Well, don't the tables show that?

Q. They do not show it with regard to merchandise, do they, during that period? They show it for a month, as confined to the state of Minnesota.

A. Yes, that is all that is shown, because, as I have said, I do not think that the influence upon our interstate revenues was serious.

Q. Then the truth is that the operation or enforcement of the merchandise rates between stations in Minnesota upon the Minneapolis & St. Louis railroad have had no effect upon interstate rates or other rates?

A. No serious effect so far as our road is concerned.

Q. And the claim that the commodity rates will have such effect is purely a matter of judgment upon your part?

A. Well, I can't say that, because the reductions which I have figured out would have been an actual fact based upon the factors that I give.

Q. Have the merchandise rates had any serious effect upon the Minneapolis & St. Louis road within the state of Minnesota?

A. I think so.

Q. You have not ascertained exactly how much less the earnings of the Company have been under those rates than they would have been if the old rates had been maintained?

A. No.

Q. Nor have you made any such computation as to any other effect which the merchandise rates might have or may have had upon the Minneapolis & St. Louis road?

A. Yes, I have made some computations; I gave them in my direct testimony.

Q. Well, I mean other than what you have given, taking the actual facts, the total tonnage.

Mr. BUTLER: Do you mean other than the period covered by Exs. 15, 16, and 17, Mr. O'Brien?

Mr. O'BRIEN: Yes.

A. No, those are the statements.

Q. The price of wheat is fixed by its price in Chicago less the freight from point of shipment to Chicago, is it not?

A. In our territory it is fixed by the price at Minneapolis less the freight or without the freight. I presume there are commissions and other things.

Q. Is not the price at Minneapolis fixed by the price at Chicago less the freight?

A. I don't know.

Q. But the price at Minneapolis or the price throughout Minnesota is certainly fixed by the price in Minneapolis less the freight to that point?

A. That is the way it is on our road.

Q. That is also true as to the price of cattle raised throughout the state of Minnesota, is it not?

A. Not necessarily. They don't buy cattle in the same way they buy wheat. They do not base the purchase of cattle and the sale of cattle exactly as they do wheat. The freight rate on a car of cattle would be a mighty small consideration where it might be a very great consideration on a carload of wheat.

Q. Is it not true that quotations are given upon cattle each day?

A. Yes.

Q. Do not the cattle-buyers throughout the country use those quotations?

A. Yes, but—

Q. And the price to the farmer of his cattle in ordinary

cases is the price at the stockyards less the freight?

A. No.

Q. It doesn't cut that same figure?

A. It hardly ever cuts any figure.

Q. How about sheep and hogs?

A. Oh, the same as cattle. The freight rate does not cut so much figure with those. It cuts some figure, of course, but not so much.

Q. Now, with regard to lumber. From the distributing points in Minnesota is not the price of the lumber to the consumer fixed by the price of the lumber at the mill with the freight and the retailers' profit added?

A. I don't think so.

Q. But do you think that the freight is not taken into consideration?

A. Some consideration is given it, of course, but the ultimate price, I think, is fixed by combination.

Q. The ultimate price, you think, is fixed by combination?

A. By an understanding.

Q. You mean a "gentlemen's" agreement?

A. Yes.

Q. But that ultimate price is always put beyond the price at the mills with the freight added, is it not?

A. I think so.

Q. The freight charged upon wheat is entirely immaterial to the large wheat-buyer at Minneapolis, is it not?

A. Well, I couldn't say that because I don't know.

Q. As long as it is not so high that the wheat cannot be purchased at a profit?

A. Well, there is the flour to be taken into consideration. I could not answer that question.

Q. In eliminating competition between different communities, competition between different mill-owners, the price of the freight upon wheat is immaterial to the buyer, is it not?

A. I couldn't say that, Mr. O'Brien.

Q. And upon lumber and coal, eliminating the competition between roads or coal-fields, the amount of freight is immaterial to the producer, is it not, or the large dealer?

A. You have eliminated so much that I can't answer the question. I am not so certain about that.

Q. The price of coal to the consumer is fixed by the price at the mine with the freight added, is it not, and such price as may be added in addition?

A. Well, of course, that is true if you eliminate competition, but I cannot eliminate it.

Q. Well, you say it is true if competition is eliminated but you can't imagine that being eliminated?

A. No, I can't imagine the competition between the different commodities (that is, the different kinds of coal) or the carriers being eliminated.

Q. Is it not true that, comparatively speaking, there is more through tonnage in car load lots entirely within the state of Minnesota upon the railroads than you will find in almost any other portion of the United States?

Mr. BUTLER: We will note an objection to that as irrelevant and not cross-examination.

The MASTER: You may answer.

A. I can't answer it.

Q. The great bulk of the wheat hauled in Minnesota is in carload lots, is it not?

A. Yes.

Q. And the greater proportion of it is in train load lots?

A. Not with our road.

Q. But a considerable portion of it is in train-load lots?

A. Wheat moves erratically, but when it is moving we probably get nearer to train-load lots of that than any other commodity we move. It does not move generally nor smoothly.

Q. In the northern part of the state train-load lots of wheat

are the rule, are they not, while the wheat is moving?

A. I could only say from hearsay; I don't know.

Q. Well, you must have a general idea?

A. I have an idea—

Q. Isn't that true?

A. —that there is a tremendous traffic there when it moves.

Q. The same is true with regard to the immense cattle shipments throughout the state of Minnesota, is it not, they are hauled in carloads and in train-loads on all the roads?

A. You gather up a train-load of cattle in Minnesota, yes, sometimes more than one train, and run more than one section, but most of our cattle that are carried in train-loads through Minnesota come from beyond.

Q. The immense shipments of coal from the Head of the Lakes come to these Twin Cities in train-load lots, do they not?

A. Well, of course I suppose they do; I don't know.

Q. Does it not sometimes come to your road in train-load lots?

A. No, not from the Head of the Lakes.

Q. From the yards at St. Paul?

A. No, from no place in Minnesota. We might have a train-load from some other territory.

Q. But you know that it does come from there in train-load lots?

A. From where?

Q. From the Head of the Lakes.

A. Oh, no, I don't know.

Q. You also know that from the Head of the Lakes and the northern part of the state to Minneapolis and Stillwater train-loads of logs are constantly hauled, do you not?

A. I don't know that, Mr. O'Brien.

Q. Well you do know that there are a great many thousands of train-loads of iron ore hauled entirely within the state of Minnesota?

Mr. BUTLER: On the St. Louis road?

Mr. O'BRIEN: No.

A. I would be very ignorant if I didn't know that there was a tremendous tonnage moving, but I don't know the tonnage, I don't know just how they run their trains.

Q. A large portion of this different kind of traffic to which I am referring begins and ends within the state of Minnesota, does it not?

A. Well, so far as wheat is concerned, with us—

Q. Now, I am not asking you of wheat, I am speaking of this traffic generally.

A. I don't know, Mr. O'Brien. I don't want to state a fact beyond our own road, that which I do know. I have an idea and opinion—

Q. Will you please give it?

A. As to what?

Q. Your idea and opinion in response to my question.

A. I believe the interstate tonnage is greater, I should say, than the local tonnage.

Adjourned until Monday morning, August 10th.

FEDERAL BUILDING, Monday August 10, 1908, the hearing was resumed at 10 A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. I desire to call your attention to Ex. 14. Will you please explain the method in which you estimated the loss which would have been incurred by the Railroad Company during the period covered by that tabulation upon Minnesota interstate business if the proposed commodity rates had been enforced?

A. I would have taken a way-bill, for instance, or an abstract. In the case of soft coal we took the weight of it. Now, understand, Mr. O'Brien, I didn't look at every way-bill myself personally. I had them drawn up and the rates noted; we noted the rates in them; I told them the rates that would be effective on interstate business, had the local rates been made. We figured this way: During the period of May 25, 1906, M. & St. L. car 4,052 with hard coal, moved from Duluth, Minnesota, to Jordan, Minnesota; it came to the Minneapolis & St. Louis road from the Northern Pacific at Minnesota Transfer; it weighed 54,900 pounds; the rate was $1.95. That gave total freight charges $53.53. The statutory rate would be $1.48. That, and allowing the Great Northern their arbitrary, would make a reduction to us of $12.90. Now, we would take our interstate tariffs from Peoria, if you will,—

Q. Wait a moment. Well, go on.

A. We take our interstate tariff from Peoria, and if the rate from Peoria is $1.95 to Minneapolis, and the rate from Duluth to Jordan is reduced to $1.48, we reduce our rates from Peoria to Jordan exactly the same, because the relation of the rates is fixed exactly in that way; competition has fixed them in that way, experience has fixed them that way, they have been in that relation to each other for years.

Q. Now, in describing how you have arrived at the loss which you say the road would have sustained, you have referred to a shipment from Duluth to Jordan?

A. Yes.

Q. That would be an item included in the first line of each division of Ex. 14?

A. Yes, sir.

Mr. BUTLER: Well, it would be against the hard coal line, in this instance, wouldn't it?

Mr. O'BRIEN: No, the first line in each of these divisions refers to intrastate; the second and third line represents in-

terstate; I don't know whether it was hard or soft coal.

Mr. BUTLER: He said it was hard coal.

WITNESS: It doesn't make any difference. There are soft coal items here, too, but it does refer to the first item.

Q. It refers to the first line of each division?

A. Of the Minnesota state traffic item.

Q. Now, what is the distance from Duluth to Jordan, the place you mention?

A. I will have to get my guide.

Q. Were you not reading an actual shipment from your papers here?

A. Yes.

Q. Well, what was that shipment?

A. It was a shipment of hard coal from Duluth to Jordan.

Q. At how much per ton?

A. $1.95.

Q. Now, what is the distance from Duluth to Jordan?

A. I don't know unless I should see a guide; I could figure it out.

Q. Refer to this large map here.

A. Well, that doesn't give me the distance, does it?

Q. Yes, it will, if you look at it.

Witness examines map.

A. It would be 191 miles, according to that map. I don't know whether that is our official distance or not; very close to it, of course.

Q. You were referring to hard coal, were you?

A. Yes, in that illustration.

Q. And the rate charged at present upon hard coal from Duluth to Jordan is what?

A. My example referred to a shipment that moved May 25, 1906; it was then $1.95.

Q. Well, is it the same at present?

A. The rate from Duluth to Jordan at present is $1.85.

Q. $1.85?

A. Yes.

Q. The rate which would be allowed by Chapter 232 for a haul of that distance would be $1.42?

A. The rate would be $1.48, as I figure it. You figure a little different mileage, I think.

Q. Well, I am figuring it at 195 miles, would be $1.42.

A. What would it be at 200?

Q. This rate that you speak of is a joint rate, is it not?

A. Yes.

Q. And in ascertaining the loss which the Minneapolis & St. Louis Company would sustain, you have credited to the initial road the same amount of the joint rate which it receives at present?

A. Yes, that is true.

Q. Which you call the arbitrary?

A. Yes.

Q. And that has thrown the entire loss from this reduction into the Minneapolis & St. Louis?

A. Yes.

Q. And that has been done in every case?

A. Well, that would be the case in a coal rate.

Q. That is what you have done in every case?

A. Oh, no.

Q. In these calculations that you have made?

A. No; I couldn't say that, because the arbitrary doesn't apply; there wouldn't be the same arbitrary on soft coal. If you want other examples I will explain.

Q. I don't mean that you have made the same amount of reduction, but you have always conceded what you call the arbitrary to the other road?

A. In the case of soft and hard coal, yes.

Q. In the case of soft and hard coal?

A. From Duluth.

Q. Have you not done that in every instance where you have computed the loss to be sustained under a joint haul?

A. No.

Q. In what cases have you not done so?

A. Well, we would not have done so, Mr. O'Brien, in the case of grain, and our interstate rates, of course, would not be figured on an arbitrary basis, but a percentage basis, so that in the case of the shipment, coming from Peoria, for instance, to Jordan, the Minneapolis & St. Louis road would have received a percentage, say, I think 40 per cent. of the gross rate from Peoria to Jordan, and we only deducted 40 per cent. of the reduced rate from the Minneapolis & St. Louis proportion in order to get at the net loss of the Minneapolis & St. Louis Railroad.

Q. Confining yourself to the first line in each of these divisions upon Ex. 14 on the intrastate business, have you in all cases, where a joint haul was considered, assumed that the entire loss would be borne by the Minneapolis & St. Louis?

A. No, except upon Duluth business where the arbitrary would be 75 cents on soft coal and $1 on hard coal, and where the local rate was less than the prescribed rate under the statutory act, the act of the legislature.

Q. Will you repeat that?

A. I think you will find the statutory rate from Duluth to Minneapolis, for instance, (152 miles)—what would that be, Mr. O'Brien?

Q. It would be $1.20. And still their local rate is 75 cents on soft coal from Duluth. I am speaking of hard coal.

A. Then hard coal would be $1; so that where the arbitrary demanded by the connecting line from Duluth to Minneapolis was less than the statutory rate, I conceded that that was the least that they would take because they told me it was the least that they would take.

Q. Now, will you turn to the rate allowed for hard coal

for a haul of 39 miles? (That would take a rate of 40 miles.)

A. The rate would be 74 cents per ton.

Q. Now, the joint rate, at the present time, from Duluth is how much?

A. $1.95.

Q. Of which the initial carrier receives $1, you say?

A. $1, yes.

Q. And you receive 95 cents?

A. We receive 95 cents.

Q. In estimating the loss which the Minneapolis & St. Louis Company would sustain under these rates, you have taken the rate of—what rate did you take on hard coal?

A. $1.48.

Q. And still allowed to the initial carrier the same amount that he is getting now?

A. Yes.

Q. $1?

A. Yes.

Q. And charged as loss to the Minneapolis & St. Louis Company the difference between $1.48 and $1.95?

A. That is it.

Q. You did this, you say, because the present rate received by the initial carrier, being less than the legislative rate for carrying a ton of hard coal the distance from St. Paul to Duluth, you considered that you had no right to assume that there would be a further reduction in the rate?

A. Well, I assumed that after having made some inquiry as to whether we could expect any change in the rate.

Q. But you did assume that?

A. Yes, that was the assumption, that would have to be the assumption.

Q. That was the reason you gave for that assumption, was it, that you could never ask the arbitrary (what you call the arbitrary) to be lowered if it was at present lower than the legislative rate for that distance?

A. Well, my own judgment had something to do with that, Mr. O'Brien. I didn't feel that the other road could accept less or would accept less after they told me they would not.

Mr. BUTLER: Mr. Tittemore has said the present rate was $1.85. The rate at the time of the transaction he instanced was $1.95, and you have since referred to $1.95 as the present rate in some of your questions, meaning, I suppose, the then present rate at the time of that particular instance.

WITNESS: That is as I understood it.

Q. Well, is this calculation made at $1.85 or $1.95?

A. At $1.95, Mr. O'Brien.

Q. This calculation is made at $1.95?

A. This calculation is made at $1.95.

Q. So that, in considering your calculation, it is proper to consider is it as of $1.95?

A. Yes.

Q. Now, in accepting the legislative rate for 39 miles from Minneapolis to Jordan, the Minneapolis & St. Louis Company would be receiving a lower sum than it is at present, would it not, or than it was when these calculations were made?

A. I don't get that question.

Q. Well, the proportion of the rate that was received by the Minneapolis & St. Louis Company was 95 cents?

A. Yes.

Q. Of the amount of the rate?

A. Yes.

Q. The legislative rate for a haul of that distance would be 74 cents?

A. Yes.

Q. And in your calculation, the Company only received 48 cents?

A. Would have received.

Q. Would have received 48 cents?

A. 48 cents, yes, sir.

Q. Now, this rate that we are speaking of is what is known as a joint rate?

A. Yes.

Q. It is a rate that is put in by the voluntary action of two carriers?

A. Yes; we agree to it.

Q. The proportion in which that rate is divided between those two carriers is a matter of private agreement between them?

A. On one side, yes. Of course, in the settlement of the case sometimes we had to agree.

Q. If the big road is troubling you, Mr. Tittemore, the Commission is ready to stand by you whenever you desire.

A. I didn't mean it in that sense. I mean that they are arbitrary as to their proportion and all we can get out of it is 95 cents.

Q. When you don't make common cause for the state the state won't make common cause for you. The division of this fund is a matter of private agreement between the two carriers?

A. It is a matter of understanding between us, yes.

Q. You know that the statutes of this state give the Railroad & Warehouse Commission jurisdiction of just such a rate as that, do you not?

A. Yes.

Q. And that the statutes of this state provide that the Commission has authority to say how that rate should be divided?

A. Well,—

Mr. How: Which is probably unconstitutional.

Mr. O'Brien: It has been sustained by the Supreme Court of the United States.

Mr. How: Has it?

Mr. O'BRIEN: But that was before this case (the habeas corpus case) was there.

Mr. DURMENT: Probably wouldn't sustain it now, but that is—

Mr. BUTLER: The case was probably not well presented.

Mr. O'BRIEN: I presented it myself.

Mr. BUTLER: On the other side. The question of making the division was not before the Court at that time, was it?

Mr. O'BRIEN: Of course, I don't want to get into a legal argument with the witness, but I want to refer to these matters as we go along, your Honor, because your Honor is trying nine cases simultaneously and it is such an involved proceeding that I am afraid if we don't fasten down one or two of these questions as we proceed we will all forget it.

Mr. SEEVERS: The question, however, Mr. O'Brien, is directed to the witness more to his understanding than the effect.

Mr. DURMENT: It is perfectly proper to do so; the witness himself has fixed these rates and made the changes on that basis.

Mr. O'BRIEN: The witness presents a table here upon what he claims is the effect of the law. Now, if you have not advised the witness as to how to prepare that table, why we would like to show that, and if you have advised him and advised him wrong, we will have to try to show that.

Q. Now, you know that the law of the state of Minnesota authorizing the Commission to make a fair division in the joint rate was sustained by the Supreme Court of the United States in a case in which your particular road was involved, don't you?

A. I have heard about the case.

Q. The State against the Minneapolis Railroad Company?

A. I have heard about that case, yes.

Q. Well, now, Mr. Tittemore, do you still think that under those circumstances you were justified in assuming that the

entire reduction would be sustained by the Minneapolis & St. Louis road?

A. I felt that thirty years of arbitrary action upon the part of the northern lines in demanding a certain arbitrary from the lines south of Minneapolis, the fact that they had not been changed on that particular business, was a pretty good criterion that they would not be changed. I used my own judgment as to the fairness and reasonableness of the rate.

Q. However, if that is not an absolute necessity under the provisions of Chapter 232, your computation of the loss to be sustained by the Minneapolis & St. Louis Railroad Company is worth nothing, is it?

A. I didn't want to see the arbitrary from Duluth to Minneapolis reduced. I didn't want to ask any power to reduce it. It affected my interstate rates too much.

Q. Unless that is the legal effect of Chapter 232, your computation here is of no value, is it?

A. My computation is absolutely correct.

Q. Upon your assumption,—is that it?

A. Yes, I have testified to that.

Q. But if it isn't true that the entire reduction is to be borne by the Minneapolis & St. Louis road, where there is a joint rate in existence, your calculation here is not correct?

A. Of course, if we didn't have to assume all of the reductions I have figured out, my calculation would not be correct, no, but I figure we would.

Q. Therefore, if you are not correct in your opinion as to the legal effect of these acts, your calculation is not correct?

A. I don't want to say that, because I have in mind all of the time the second two items in each paragraph there, which are of more moment to me than the first.

Q. Mr. Tittemore, one item being incorrect, makes your table an incorrect table?

A. No.

Q. It does not?

A. No, the arbitrary from Duluth to Minneapolis would not affect the reduction in our interstate rates nor the proportion that we would have to bear.

Q. This table is incorrect if any of its items are incorrect, is it not?

A. If the assumption upon which I based the first item were wrong, the figures in that item would be changed to that extent; but it would not affect the other two items, for the reason that, in the first item, we are dealing with the arbitrary proportion of a rate, whereas the other two items are made upon the actual reduction that would come as the result of that.

Q. You mean that the other portions of the table, where such other portions are correct and where such other portions are not affected by the error in the first item, would still stand?

A. I mean that if the gross rate, for instance, from Duluth to Jordan be reduced any, that would effect a reduction in all of our interstate rates, no matter what assumption I might have made as to the proportion of the through rate that I would have received out of the $1.95 rate from Duluth to Jordan, from Duluth to Minneapolis going to Jordan, or that the other line might have received.

Q. The question I asked you was whether or not, if your legal conclusion as to the necessity of the entire reduction to be borne by the Minneapolis & St. Louis road were incorrect, your table Ex. 14 was not incorrect.

A. Competition would have fixed the gross rate, and the division of the through rate would not have changed the result in the other items necessarily. We are getting a division of the through rate and the other rate confused.

Last question read.

A. The first item might be incorrect, but not the entire table; that is, the other two items might not be incorrect in con-

sequence of the other.

Q. The items referring to Minnesota state traffic, then, you say, exclusively would be incorrect, but the items referring to interstate traffic would not be affected by the incorrectness of the first?

A. It would not follow, no.

Q. Now, we will take the second line. The second line in each division of the table represents the loss which the Minneapolis & St. Louis Company would sustain on what is described as Minnesota interstate traffic, which I understand to be interstate traffic which begins or ends or touches the state of Minnesota.

A. Yes, sir.

Q. Now, will you please describe generally the character of that traffic?

A. With regard to coal?

Q. No, what does it consist of largely?

A. Interstate traffic?

Q. Yes, that interstate traffic upon your road.

A. The interstate traffic of our road consists of everything that is transported in box-cars and cars of any kind, grain and all of its products, coal, lumber, various kinds of livestock, all classes of merchandise; in fact, everything that is transported under the classification of a rate and schedule of rates.

Q. It is just about as general a traffic as can be imagined, is it?

A. Yes, although the predominating traffic on the Minneapolis & St. Louis road (the interstate traffic) would be grain and its products.

Q. Grain and its products?

A. Yes.

Q. And that is principally traffic moving from Minnesota, then?

A. Principally from Minnesota, yes.

Q. From Minnesota, Dakota and Iowa to the East?

A. Yes, to the East; and coal when it comes—well, you are speaking of the Minneapolis & St. Louis road, of course, all the time.

Q. Now, the Minneapolis & St. Louis road terminates in Iowa?

A. It has a terminal point in Iowa.

Q. Well, its eastern terminus is in Iowa?

A. Eastern and southern. Well, we call Albert Lea its southern terminus when it comes to handling most of our interstate traffic; then our grain traffic from Iowa would originate on our southern division or our Des Moines & Fort Dodge division; our wheat business would come in from South Dakota.

Q. How far south or east do the lines operated by the Minneapolis & St. Louis Company extend?

A. One line extends to Albert Lea, 108 miles, as I remember it, from Minneapolis; then its other line, there is a line that diverges from Albert Lea and goes to Angus, Iowa; there it connects with the Des Moines & Fort Dodge, which is leased by the M. & St. L. road, and makes a terminal in Des Moines, Iowa. I think that is about 300 miles distant from Minneapolis.

Q. Then the southern terminus of the lines operated by the Minneapolis & St. Louis is at Des Moines?

A. Albert Lea, Des Moines and Storm Lake, Iowa.

Q. Which is the most southerly of those points?

A. Des Moines.

Q. Then Des Moines is the most southerly point,—is it there that you connect with the Illinois Central?

A. No.

Q. Where is the connecting point between the Minneapolis & St. Louis and the Illinois Central?

A. Albert Lea is the point, the junction through which we

do most of our interstate traffic, 108 miles distant from Minneapolis.

Q. Both passenger and freight?

A. Yes.

Q. Have you a traffic arrangement with the Illinois Central?

A. We have our own arrangement for doing through business, yes.

Q. Is that a written contract?

A. No.

Q. You have no contract in writing with that road?

A. No, except such as would come from letters and conferences passing back and forth.

Q. Now, through trains are run from points along the line of the Minneapolis & St. Louis road in Minnesota to Chicago, are they not?

A. We have through passenger-car arrangements, a sort of pooling of equipment, but there are no through trains so far as freight service is concerned. Our engines, in other words, do not go over on their tracks at all.

Q. So if you deliver to the Illinois Central at Albert Lea any number of cars of freight, those cars are picked up and put into the trains of the Illinois Central?

A. And taken on.

Q. And hauled East?

A. Hauled East. I want to say, Mr. O'Brien, that we probably give to the Illinois Central trainloads of freight.

Q. Oh, yes, but what you mean is the identity of the train is destroyed at Albert Lea?

A. Is destroyed at Albert Lea. We have no control over the trains.

Q. And the same is true with regard to freights coming West?

A. Yes.

Q. You take the individual cars from the Illinois Central, freight cars, and make up your own trains?

A. Yes.

Q. Is that it?

A. Yes; they hand their trains over to us to put them in our yard,—in fact we use the same yard.

Q. Now, the passenger service is a through service, is it not?

A. There are certain through passenger cars run and certain through Pullman cars run, for the accommodation of the public, but no through locomotive service.

Q. But the passenger cars do run through?

A. Yes, some of them.

Q. Is all of this business done without any written contracts?

A. Yes.

Q. Between the Illinois Central and the Minneapolis & St. Louis?

A. Yes. The Minneapolis & St. Louis Railroad Company has never had a written contract with any company on that traffic.

Q. Is there any identity of management between the Minneapois & St. Louis and the Illinois Central?

A. Not a particle that I know of.

Q. No common officers?

A. No.

Q. From what do you determine the proportion of the earnings which each road is to have where this joint service is performed for the public?

A. From the divisions; I have arrangement with the Illinois Central traffic department.

Q. Those divisions were arranged verbally, do I understand?

A. The same as all divisions are arranged.

Q. Well, an understanding?

A. Well, yes; as a general proposition, two traffic men get together and agree upon their divisions without any writing at all, and then we print them, we submit them back and forth and finally the proofs are submitted and O.K.'d by the heads of the departments, then printed and filed with our auditors and that is all that we have in this case—we have a printed division with the Illinois Central road. May I say, Mr. O'Brien, to make it perfectly clear, we have other points of connection with the Illinois Central; for instance, like local business going off from the Southwestern division of the M. & St. L. would go to the Illinois Central at Fort Dodge for transportation East, but the question of divisions would be the same in either case, would be a verbal arrangement finally submitted in print and O.K'd, approved by the head traffic official of both roads and then filed with the auditor.

Q. So that it is finally put in writing or in print and filed?

A. Oh, it must be, of course, so the auditor can make his computations.

Q. Will you produce that?

A. I haven't it here, I can produce it.

Q. Who has that?

A. It is in the Auditor's office and also on file in my office. I can give you a copy of the division-sheets that we use in the making of these computations.

Q. Well, you had better bring the division-sheets that were used say on the 6th of September, 1906, and any agreements modifying it since that time.

A. I will produce the division-sheets and any modifications of the divisions between the M. & St. L. and Illinois Central roads from and including September 6, 1906, up to the present time.

Q. Now, in arriving at the loss to be sustained on the Minnesota interstate business, did you indulge in the same pre-

sumption that you did with regard to the intrastate haul from Duluth to Jordan; that is, that all the loss that should be sustained would be sustained by the Minneapolis & St. Louis road?

A. No, I assumed that the Illinois Central road would join us in any rate that—that is, they would join us in a rate from all of their coal-producing points to Jordan, based upon the reduction that was made from Duluth to Jordan and that they would stand their proportion of the reduction, and we only charged against the M. & St. L.'s proportion that proportion which we figured on this division-sheet that I will submit to you.

Q. You are now having reference exclusively to coal?

A. All traffic was figured in the same way so far as it related to the Illinois Central.

Q. Did you figure the same with regard to the traffic going East?

A. Yes.

Q. That if a reduction was necessary upon wheat, the Illinois Central would bear its proportion?

A. I figured on wheat a little differently.

Q. Wheat and its products are the chief traffic, are they not?

A. Well, yes, but I figured that the line south of Minneapolis would not take less than 7.5 cents per hundred pounds from Minneapolis or the Minnesota Transfer or St. Paul to Chicago on wheat, but if they did, the Illinois Central would stand in for its proportion.

Q. But in estimating the loss, did you figure that they would or that they would not?

A. In estimating the loss, Mr. O'Brien, on wheat, I figured that the loss to us would be in the difference between the rate based upon the Minnesota rate—the interstate rates—based upon 7.5 cents above the rates to Minneapolis.

Q. 7.5 cents above the rate to Minneapolis?

A. Yes.

Q. From where?

A. From any point in Minnesota that was affected by the state rate.

Q. You mean the rate from outside points to Minneapolis and then 7.5 cents for the haul east to Chicago?

A. Now, let me see if I can make myself plain. A mill located at Fairfax—

Q. Let us see where Fairfax is.

A. Here is Fairfax (pointing to map).

The MASTER: In what state?

WITNESS: State of Minnesota. A mill located at Fairfax, just two or three years ago came into my office to make their arrangement—

Mr. SEEVERS: Is Fairfax on your line?

WITNESS: It is on the Minneapolis & St. Louis railroad.

Mr. O'BRIEN: It is on the line that runs east and west?

WITNESS: —I agreed with the milling company that the rate on wheat, the interstate traffic rate on wheat or flour and its products, should not be, say to Chicago or to the East, higher than 7.5 cents over the rate to Minneapolis. Now, practically, that would work out this way: A shipment of wheat from Watertown or from Madison, Minnesota, would be taken into Fairfax, we would charge them the full Chicago rate, for instance, we would collect all of the money there on the Chicago rate, say, and then we would bill it out at the 7.5 cent rate to Chicago. That 7.5 cent rate would go to the foreign line for its haul from Minneapolis to Chicago and we would actually get for our haul to Fairfax the haul to Minneapolis. What we aim to do is to put all our intermediate milling points upon a basis that will let them compete with Minneapolis, and competition and experience has proven, for a term now of many years, twenty at least, that I know of, that 7.5 cents above

the rate to Minneapolis keeps them all on a parity, keeps them all pleasant and we have no complaints; and every time we disturb that relation we have constant meetings of chambers of commerce, either in Chicago or here at Minneapolis, and the railroads have therefore agreed that that is the best possible basis for wheat and its products. It is because the Minneapolis miller has to pay the local rate into Minneapolis plus 7.5 cents.

By Mr. DURMENT:

Q. Let me see if I understand it. You make the interstate rate on your line to Chicago, say, by taking the local to Minneapolis plus 7.5 arbitrary?

A. Yes.

Q. That gives you your interstate?

A. Yes.

Q. And in the matter of grains, in making this table you figure that the arbitrary rate would have to stand the same?

A. Yes, I figure that on wheat. When it comes to the coarse grain,—

Q. That is another matter?

A. The arbitrary is not the same on coarse grain.

Q. And, therefore, on that basis, you figure that the reduction on the interstate rate, if any, which would be made under the Minnesota statute, yours would have to stand its proportion?

A. The entire reduction I do figure would come out of the Minneapolis & St. Louis' proportion. I testified to that the other day and that is correct as I figure it.

Mr. SEEVERS: Is that rate which you have fixed in and out of Fairfax what you call a milling-in-transit rate?

WITNESS: That is the effect, a milling-in-transit rate, where the wheat comes in and goes out flour.

By Mr. O'BRIEN:

Q. Now, Mr. Tittemore, I want to ask you to give a concrete

case. Supposing a shipment of wheat commences at Boyd, upon your line (that is a point west of Fairfax) which is destined to the mill at Fairfax, there to be ground, and the product of that wheat to be subsequently shipped to Chicago; what is the rate charged and collected upon that wheat commencing at Boyd, and when is the charge made?

A. Well, it is fixed, if it were going to Chicago, under our milling-in-transit circular. If it were Chicago transit, as counsel has stated, we would collect at Fairfax the full amount of the rate from Boyd to Chicago and we would credit the mill with the right to ship out free the same amount of tonnage that they had shipped in of wheat; then after the reports were in we would allow to the line south of Minneapolis 7.5 cents per hundred pounds. The division might vary a little because there are some differences in the amounts allowed, but the basis of the rate is always 7.5 cents above the rates to Minneapolis.

Q. Well, as I understand it, when that carload of wheat reached Fairfax, the full rate to Chicago would be collected?

A. Yes; that is a matter of detail.

Q. Either charged or collected?

A. Well, it would be collected if it were charged, yes, but I could change that at any time and just collect the Minneapolis rate and let the other go forward as uncollected; it is a question of accounting.

Q. If the total amount was collected, the mill then would have a credit which would entitle it to transport an equal amount of tonnage from Fairfax to Chicago?

A. Yes, if settled up within a certain length of time.

Q. Now, that rate that you would collect at the mill would be the rate from Boyd to Minneapolis plus 7.5 cents?

A. Well, that is the basis upon which the rate would have been made.

Q. What is that amount?

A. I don't know what the rate is from Boyd to Minneapolis, if I did I could figure it.

The MASTER: That is where the mill is assumed to be?

Mr. O'BRIEN: The mill is at Fairfax, the shipment originates at Boyd. Here is Boyd and here is Fairfax, (pointing at map).

Q. Now, the wheat which originates in Boyd is ground into flour at Fairfax and then after being ground goes out to Chicago?

A. The rate from Boyd on wheat and flour to Minneapolis (this tariff being between these stations and Minneapolis) is 9.5 cents per hundred pounds.

The MASTER: Is Boyd within the state?

WITNESS: Yes. Now, here is my tariff, from Boyd to Chicago on wheat and flour, 17 cents, which would be 7.5 cents added to 9.5 cents to make my through rate. Now, if by statutory enactment this Boyd rate is changed to 7.5—

Mr. BUTLER: Boyd to Minneapolis?

WITNESS: Boyd to Minneapolis, my basis or relation not changing makes my rate 15 cents instead of 17 cents.

Mr. SEEVERS: To Chicago.

WITNESS: To Chicago. The line from Minneapolis to Chicago getting 7.5 cents throws the burden of the reduction upon the Minneapolis & St. Louis Railroad Company, and that is the way I have figured to get the result so far as wheat and flour is concerned. We have some cases where the rate is based upon a lower arbitrary than 7.5 cents, where Chicago competition has compelled us to do it, and, for instance, in the case of New Ulm, we have never been able to get a rate based upon 7.5 cents above the rate to Minneapolis, but we have always had to pay 7.5 cents to get our stuff transported to Chicago. That is, if this case that Mr. O'Brien brings up here were changed, say to the milling point at New Ulm, the Northwestern road has fixed a rate there which makes our rate to Chicago based on 7 cents above the rate to Minneapolis instead of 7.5, but when we come to ship out to Chicago, even though our rate is so

based, we have to pay the connecting line 7.5 cents to haul it.

By Mr. DURMENT:

Q. That is, if you should turn it over to the Northwestern?

A. Any line would charge us 7.5 cents, just the same, although the rate is based on 7 cents. In other words, the arbitrary is never greater than 7.5 cents above the Minneapolis rate to Minneapolis, but may be less, but when it is less we have to pay 7.5 just the same. That would be the case in coarse grain, where the difference is only 5 cents, sometimes we have to pay the 7.5 just the same.

Q. That is, in certain cases the interstate rate from points in Minnesota to Chicago is made at a figure less than the Minnesota rate plus an arbitrary of 7.5, isn't it?

A. That is it.

Q. The Minneapolis rate?

A. Yes.

Q. But in these cases you have to pay to the roads south of Minneapolis out of the interstate rate 7.5 cents?

A. At least 7.5.

Q. Now, your road connects with the Northwestern at New Ulm or near there, doesn't it?

A. We have a connection there, yes.

Q. Suppose you shipped from some point beyond New Ulm through to Chicago by way of the Northwestern, stopping at New Ulm and delivering the wheat to the Northwestern at New Ulm, what would be the interstate rate and what would be the basis of division?

A. If it were from Boyd, the rate would be the same as in the case *via* Minneapolis,—the rate from New Ulm, I mean, say to Chicago; but from any point west of New Ulm on our road through New Ulm would be just the same as our Minneapolis rate and we would allow 7.5 cents from New Ulm just the same as we would from Minneapolis.

Q. That is, if you were to ship from beyond New Ulm to

Chicago over the Northwestern, delivering it to the Northwestern at New Ulm, your interstate rate to Chicago would be the same as would be a shipment through Minneapolis and from Minneapolis on?

A. Surely.

Q. And in that event you would get how much out of the interstate rate?

A. The Minneapolis rate.

Q. Then it would be divided between your road and the Northwestern?

A. Yes, sir.

Q. Shipping from New Ulm?

A. Yes, sir.

Q. On the basis of 7.5 cents to the Northwestern—

A. Yes.

Q. —and the Minneapolis rate to your road?

A. Yes. The practice is that railroads, except the lines originating west of Minneapolis, get this local rate to Minneapolis or to the junction point, but in this case that I put, the junction point is far from Minneapolis; but it would be the same if it were at Estherville, Iowa, the Rock Island road would haul it from Estherville to Chicago at 7.5 cents,—the whole scheme being an equalized arrangement that will permit all millers in Minnesota to do business in competition with Minneapolis and upon about the same basis, and that is the basis that competition for years has fixed, and that is not fixed by the railroads arbitrarily, but by conferences with the different boards of trade and the millers.

Q. How far is Minneapolis from New Ulm? the haul over your line I mean.

A. It is 94 miles from New Ulm to Minneapolis; but, Mr. Durment, in the case of the Boyd shipment, you see the Chicago shipment *via* Minneapolis or the shipment to Liverpool, England, by Minneapolis (if you will) goes this way: The ship-

ment from Boyd to Chicago or to Liverpool, England, going *via* the Northwestern road would just simply travel here and go down to New Ulm and take the Northwestern from there instead of say taking the Burlington from here, Minneapolis.

Q. But how much of a shorter haul would the Minneapolis & St. Louis have in order to deliver that wheat to the Northwestern at New Ulm than to deliver it at Minneapolis to the Burlington?

A. Well, somewhat shorter, I presume; I have never figured that.

Q. Well, about what?

A. About 58 miles.

Q. Then you could deliver your grain coming from that section over that line to the Northwestern at New Ulm and save a haul of 58 miles and get the same amount for your road as you could to take it to Minneapolis?

A. Only in the case of some man at New Ulm who would want to mill our wheat. At times his mill is closed and he won't have anything to do with buying our wheat.

Q. Suppose some man at New Ulm or beyond New Ulm wanted to ship his wheat clear through to Chicago instead of milling it at New Ulm, there would be the same rate, wouldn't there?

A. Yes. Those odd shipments of wheat I don't know much about; I don't suppose there is a hundred cars in a year on the entire system; we didn't take that into calculation, but the basis would be the same, and any man could come into my office and make the same arrangement that Fairfax could.

By Mr. O'BRIEN:

Q. Now let us go back to the instance that I mentioned of the shipment of a carload of wheat from Boyd to be milled in transit at Fairfax and then shipped to Chicago. Now, what I want to ascertain is whether or not, in preparing Ex. 14, you still in all cases allowed the connecting road the full rate being

obtained by such road under present rates, to-wit, 7.5 cents.

A. In the case of the Boyd example, I would figure that the road East—I did figure that the road East—would receive its 7.5 cents per hundred pounds.

Q. You did that in the case of every interstate wheat shipment, didn't you?

A. I did.

Q. And assigned the entire loss to the Minneapolis & St. Louis Company?

A. Yes.

Q. And that loss was arrived at by deducting from the present rates to Minneapolis the rates which are allowed by Chapter 232 for that haul for intrastate business?

A. Yes.

Q. In other words, you assumed that the necessary legal and practical effect of the establishment of the legislative rates for business between stations in Minnesota would be to compel a similar or equal reduction in interstate rates?

A. Yes.

Q. And all of that reduction you assigned to the Minneapolis & St. Louis road?

A. In the case of wheat and flour.

Q. Where shipments of wheat originated in South Dakota and crossed the state of Minnesota, did you assume that such shipments would be also affected?

A. Yes; all of our rates are made on that basis.

Q. And there, also, you assumed that the entire loss would be borne by the Minneapolis & St. Louis road?

A. Yes.

Q. I wish you would describe the method by which you arrived at the loss which the Company would sustain from the enforcement of the commodity rates on a shipment from some point in South Dakota originating upon your line and terminating in Chicago.

A. On wheat?

Q. On wheat, yes.

The MASTER: Before you take up that question, I want to ask the witness to see whether I understand how he reaches loss in rate between a point in South Dakota and in Minnesota, say Minneapolis. Supposing you wanted to find out what your loss was on a carload of wheat starting from a point in South Dakota to Minneapolis: Now, your old rate was so much from the point in South Dakota to Minneapolis; the proportion of that rate you find assignable to a point from the Dakota line to Minneapolis,—you find that proportion of the whole rate by the mileage, do you, and then compare that with the state rate from Minneapolis to the state line for the purpose of ascertaining the loss; is that correct?

WITNESS: No.

The MASTER: Just state that again, then.

WITNESS: May I use the map?

The MASTER: Yes. I don't know as I understand precisely how you reach that.

WITNESS: In the first place, a loss that would accrue to our line is sworn to there as a result of certain rates. Now, the South Dakota rate would not be affected to any great extent in any case only just that amount that would be necessary for us to make a reasonable grading up, for instance, to Minnesota. Here is the line. Now, here is Marietta. If the rate from Marietta be disturbed by the statutory enactment as I have testified to—say 2.5 cents per hundred pounds is the amount of the disturbance—the rate from Marietta, say to Minneapolis, is reduced 2.5 cents, it makes the rate to Chicago 2.5 cents less. Now, the rate at the next point cannot be 5 cents higher to Chicago than the rate from Marietta, we must have a reasonable relation between those two rates. If there were a mill over here in South Dakota (as there is a little distance on our road) over at Watertown, say, the rate would be so high from there

as compared with these rates in here that they could not compete, so that we keep a reasonable relation between those rates. The amount of reduction in the case of the figures that I have, in the case of these exhibits, amounts to very little loss on our South Dakota traffic, because after you get west of Marietta it is rather a barren country until you get into Watertown, so we are enabled to grade up so that our loss is not severe and I would have to have the actual cases before me that I figured in Minneapolis before I could tell you what the amount of that loss would be, but it would not be serious, in any event.

The MASTER: Well, you applied the commodity rate to the whole haul?

WITNESS: No, we applied any rate from here that competition and experience in the past fixes. For instance, your Honor,—

Mr. HOW: By "from here" you mean South Dakota?

WITNESS: I mean South Dakota. For instance, if the rate from Marietta before this law was passed was 20 cents to Chicago and 21 cents from the first point in South Dakota, if this rate were reduced to 18.5 cents we would reduce this rate to 19.5 cents, keeping the same cent difference there. Now, as quickly as we could after we got away from there we would grade up. We made this loss just as little as we could in my computations of the South Dakota business. The distance tariff has nothing to do with the making of those rates; that is, it didn't have in this case.

Q. You have not attempted to apply the rates fixed by Chapter 232 to your entire business?

A. To all of the business included in this exhibit, yes.

Q. Well, to all of your business excepting the interstate?

A. No.

Q. You have not attempted to do that?

A. Except as it had an effect. Those cases were specific and would be shown in the statements figured which are preserved

somewhere. If it affected one carload of wheat from the first point over the Minnesota line in South Dakota to the extent of $20 it appears in that.

Q. That is, if, in your judgment, it would so affect it?

A. If, in my judgment, based upon my experience and the precedents established and the agreements made with different millers it would do that.

Q. I wish you would describe the method by which you arrived at the loss which the Company would sustain from the enforcement of the commodity rates on a shipment from some point in South Dakota originating upon your line and terminating in Chicago,—on wheat.

A. I would have to repeat just what I have said to his Honor. That would be about my answer, and I might add that the 7.5 cents would be the same to the foreign line.

Q. And that 7.5 cents in your calculation has been given to the eastern carrier no matter where the shipment was taken from on your road?

A. Yes; that is, the division.

Q. Whether taken at Albert Lea—

A. No, that would not be true from Albert Lea, very little of our own grain goes over our own rails from Albert Lea to Chicago, but we would allow our line its regular proportion of the 7.5 cents in these computations.

Q. What do you mean by "our line"?

A. Well, our proportion of the 7.5 cent rate from Minneapolis to Albert Lea, for instance, in a haul to Chicago. You see, Mr. O'Brien, there would be the Burlington road that would take our wheat or flour, the Milwaukee road would take our wheat or flour, the Northwestern road can take our wheat and flour, or the Minneapolis & St. Louis road and the Illinois Central can take our wheat and flour. The M. & St. L. is credited with its full proportion, in these statements, of the 7.5 cent rate; there is no deduction made for that.

Mr. BUTLER: With all shipments going by way of Albert Lea?

WITNESS: Yes, all wheat or flour shipments.

The MASTER: How is the proportion determined?

WITNESS: Upon agreement, your Honor.

The MASTER: Not upon mileage or anything else?

WITNESS: No, the agreement between the Illinois Central road and our road is predicated or made the same as the agreement between the Rock Island and the old Minneapolis & St. Louis Company. They allow the railroad a small arbitrary for terminal and then about a mileage proportion. Our proportion is very small. I think in the case of a shipment of wheat from Minneapolis (that is, through transit from Minneapolis to Chicago) we would get 22 per cent only.

Mr. HOW: After your allowance for terminal?

WITNESS: There would be no allowance for terminal in that case.

Mr. DURMENT: And what proportion is the mileage from Minneapolis to Albert Lea of the entire haul from Minneapolis to Chicago?

WITNESS: I think it figures about that. The mileage is about 500 miles and the mileage to Albert Lea 108; we struck at an average as between all lines. For instance we can handle business out from Minneapolis *via* Waseca to Chicago.

The MASTER: You do take into consideration the mileage but you take into consideration many other things as well?

WITNESS: Many other things as well. The mileage is one thing, but there are very many other things combined with it.

Mr. DURMENT: The haul from Minneapolis to Chicago, then, on the average, is 500 miles?

WITNESS: Yes.

Mr. DURMENT: And for that, 7.5 a hundred is allowed on wheat, for that haul of 500 miles?

A. Yes.

AFTERNOON SESSION.

Q. You wanted to make a correction?

A. Yes, I wanted to say that where I stated in my testimony this morning that the 7.5 cent rate or proportion of the rate south of Minneapolis to Chicago would be divided with the Illinois Central road and we would get our proportion, I want to change that to say that we would allow the Illinois Central road 7.5 cents, the full 7.5 cents south of Albert Lea.

The MASTER: What do you mean by the 7.5 cents? I think I know, but I am not sure.

WITNESS: Well, that is the allowance to the other line, your Honor, for hauling the stuff to Chicago from our junction point.

The MASTER: From the point at which you deliver the car to them?

WITNESS: Yes, sir.

The MASTER: You allow them 7.5 cents; that is the standard rate?

WITNESS: That is the standard division.

Q. That is 7.5 cents per hundred weight?

A. Per hundred weight.

Q. Have you connections at Albert Lea with any other Chicago line except the Illinois Central?

A. We have connections there with the Iowa Central, and with the C. R. I. & P. There are other railroads in Albert Lea, but we have no arrangements covering this business with them.

Q. Well, where you deliver freight destined for Chicago to any road except the Illinois Central, if you deliver it to that other road at a point nearer Chicago than Minneapolis, you receive a proportion of the 7.5 cents, do you not?

A. We have no arrangements covering that business. We have no arrangements for delivering to our connections other than Albert Lea on that business.

Q. That is a matter of choice with you, is it not?

A. No, not a matter of choice, because, if I understand your question right, if we were to deliver it, for instance, at some point nearer Chicago, we would have to turn the business over to the Iowa Central, for instance, and make another division of that thin rate, as I consider it. If you mean, Mr. O'Brien, that we might haul that on down to some other point in Iowa and give it to the Illinois Central road, I will say we have no tariffs published that way and no division governing the business that way and never have had.

Q. Well, do you mean to say that you could not make a more favorable traffic arrangement with some other road?

A. We would not expect to make a more favorable traffic arrangement than what we have, because we feel that the rate the other road hauls our freight for is as low as we could possibly ask; I doubt if it is being remunerative except where we hand business to them in large quantities.

Q. What is the distance from Albert Lea to Chicago?

A. It is about 400 miles; I don't remember exactly.

Q. Under this arrangement, the Illinois Central gets as much for hauling wheat from Albert Lea to Chicago as the other roads get for hauling that wheat from Minneapolis or St. Paul to Chicago, a distance of 500 miles?

A. In that case, yes.

Q. And as much as the Northwestern receives for hauling wheat from New Ulm, which is nearly 600 miles?

A. Well, the 7.5 cent arbitrary applies from all of our junctions.

Q. Now, will you please give us the line of travel taken by a car of wheat originating on your Pacific Division,—is it not—

A. Yes.

Q. —running east and west, west of Winthrop, and destined for Chicago *via* the Illinois Central, at any of those stations?

A. Here is Winthrop (pointing on map); suppose the car starts at Fairfax; it travels through Minneapolis, and is delivered to the Illinois Central at Albert Lea.

Q. Now, what is the rate per hundred upon wheat from Fairfax to Chicago?

A. What was it at that time, or what is it now, Mr. O'Brien?

Q. Well, what was it at the time you prepared these tables?

A. The rate on wheat would have been 16 cents per hundred pounds from Fairfax to Chicago.

Q. And of that sum 9.5 cents would have been retained by the Minneapolis & St. Louis?

A. Yes.

Q. Now, the distance from Fairfax to Minneapolis—

Mr. How: No, 8.5 cents.

Mr. O'Brien: 8.5 cents.

Witness: Yes, that is right, on the 16-rate rate.

Q. The distance from Fairfax to Minneapolis is 93 miles, is it not?

A. Yes, according to that map.

Q. And from Minneapolis, or from the Transfer, really, (these distances are estimated from the Minnesota Transfer, I think).

A. Not in relation to wheat; they usually go into some of mills for milling, you know.

Q. And the distance from Minneapolis to Albert Lea is 106 miles?

A. I supposed it was 108; that is the distance we call it. That map may show it 106.

Q. Now describe the route which would be taken by a carload of wheat originating on your line south of New Ulm and destined for Chicago, say at Ormsby.

A. I will have to look up the rate first. You could route the Ormsby shipment, if it was going over the Rock Island

road, out *via* Estherville; it is according to whether or not there was a milling arrangement for it there on the Rock Island road. If a mill was to buy the wheat at Ormsby and route it out over the Rock Island road, it would move that way. It would be more likely to be purchased by the Minneapolis elevator man or miller and be moved to Minneapolis that way and out.

Q. *Via* Minneapolis what is the rate?

A. 17 cents as I figure it in this tariff.

Q. 17 cents?

A. 17 cents from Ormsby to Chicago *via* Minneapolis.

Q. And Ormsby is 131 miles from Minneapolis, is it?

A. Yes, it is, according to that map, and I presume that map is correct.

Q. That is, it is 38 miles farther from Minneapolis than is Fairfax?

A. Yes, according to that map it is.

Q. And the difference in the rate is one cent per hundred?

A. Yes.

Q. Now, if it took the other route going over the C. R. I. & P. to Chicago, what would be the rate?

A. The same.

Q. The same rate to Chicago?

A. Yes.

Q. And in that case where would you deliver it to the Chicago, Rock Island & Pacific?

A. More than likely at Estherville, Iowa, but might deliver it to the Rock Island at Minneapolis. It is according to the transit arrangement upon which the stuff would run, according to who would buy it, where the mill or elevator would be located that would buy it.

Q. How far is Estherville from Ormsby?

A. Only a short distance. I can find it on the map there.

Q. You can find it on your own map?

A. Well, there are no distance tables there.

Q. Well, Estherville is not very far from the Minnesota line?

A. A very short distance from Ormsby.

Q. And Ormsby is about twenty miles from the line?

A. Not more than that. I don't know exactly, but it is a short distance.

Q. So that it is probably not more than 30 or 40 miles from Ormsby to Estherville?

A. I don't think it is that much.

Q. And for that haul you would receive 9.5 cents?

A. Yes, we would receive 9.5 cents. We would allow the line east of Estherville 7.5 cents per hundred pounds; we would receive 9.5 cents.

Q. What was your local rate at the time of which we are inquiring (and I suppose is still) from Fairfax to Minneapolis, for a local shipment?

A. Of grain?

Q. Of wheat.

A. The rate at that time on wheat from Fairfax to Minneapolis was 8.5 cents per hundred pounds.

Q. 8.5 cents?

A. Per hundred weight.

Q. So that the same rate was charged by the Company for hauling this wheat from Fairfax to Minneapolis as for hauling the same wheat 106 miles farther to Albert Lea?

A. I don't quite catch your question.

Q. Well, if a person made what we call a local shipment of wheat from Fairfax to Minneapolis, a distance of 91 miles, the charge was 8.5 cents per hundred pounds?

A. Yes.

Q. If that person made the shipment to Chicago *via* Albert Lea and the Illinois Central, the charge of the Minneapolis & St. Louis road was still 8.5 cents per hundred pounds?

A. Out of what rate? I thought the rate was 16 cents from Fairfax.

Q. Yes, to Chicago.

A. Then the Illinois Central would get 7.5 cents out of the 16 cents, Mr. O'Brien.

Q. Well, you would get how much?

A. We would get 8.5 cents.

Q. That is what I said, you would get 8.5 cents.

A. Yes, we would get 8.5 cents.

Q. So you would get the same compensation for hauling a car of wheat from Fairfax to Minneapolis, 93 miles, as you would for hauling it from Fairfax to Minneapolis and thence to Albert Lea, a distance of 199 miles?

A. Yes, that is true.

Q. Was the rate, and is the rate from Fairfax to Albert Lea remunerative?

A. We endeavor to divert just as much business away from that line under those circumstances as we can and turn it over to the railroads directly at Minneapolis, Mr. O'Brien.

Q. I should think you would.

A. But the millers along the main line we must protect, and if there is a man at New Prague, for instance, who may have an elevator out on our line west of Fairfax or in that locality, it is as necessary for us to have him on our line west with his elevator as it is to have him at New Prague with a mill, and in that case, for his convenience and for his privilege, we give him the right to route down that way, and in that case we do sacrifice some for his sake as well as for our own. The idea is to create the tonnage.

Q. Was the interstate rate from Fairfax to Chicago *via* Minneapolis and Albert Lea and the Illinois Central remunerative?

A. In itself I should say yes; the total rate, yes.

Mr. DURMENT: The total rate and the half rate?

WITNESS: He asked me the total 16.5 cent rate, the total rate from Fairfax to Chicago. I should say yes.

Q. You understood my question to refer to the 8.5 cents received by the Minneapolis & St. Louis Company, as being remunerative to that Company, did you not?

A. I didn't understand it, Mr. O'Brien, but taking the whole situation into account I consider 8.5 cents remunerative.

Q. For that service?

A. For that service, taking the whole situation into account. I would not consider, for instance, that that might be a remunerative rate if all our traffic was hauled on it or a large amount of our wheat traffic was hauled on it, but the indirect result of that rate and the question of regulation and competition is very essential to the M. & St. L. road and its prosperity.

By Mr. DURMENT:

Q. But suppose you haul a car of wheat from Fairfax to Albert Lea for 8.5 cents, do you pay out more to haul it than the 8.5 cents brings you in?

A. No, we get that 8.5 cents.

Q. I know, but does it cost you more than 8.5 cents to haul a car of wheat from Fairfax to Albert Lea?

A. That would be absolutely impossible for anybody ever to determine.

Q. Then you don't know, when you haul a car of wheat from Fairfax to Albert Lea, whether you get paid all it costs you or more or less, is that it?

A. Mr. Durment, if—

Q. Answer yes or no.

A. Well, it wouldn't do you any good,—it wouldn't do me any good to answer that in that way because it don't mean anything.

Q. Well, we want the answer.

A. One car would absolutely be a loss and we couldn't haul it.

Q. Yes, but take all the wheat that goes over your line to Chicago by way of the Illinois Central, that starts say, from Fairfax, and you get 8.5 cents per car for hauling that from Fairfax to Albert Lea, does that pay you the cost of transportation, taking it all together?

A. I think it does.

Q. Does it pay you any more than the cost of transportation, all together?

A. I couldn't tell. No one can. You can't segregate that item.

Q. But you think that it would pay the cost of transportation, at any rate?

A. Oh yes, I do; but there is so much that—

Q. Well, I know, but then we are not railroad men, we can only take a little at a time, you know; that is the point.

A. Well, I am very honest about that. I don't believe that —there is so much in that question to consider that it is unfair to leave it there.

Q. Well, your counsel can take that up later.

The MASTER: You will hear from it again at some time during the trial.

By Mr. O'BRIEN:

Q. Will you please turn to the schedule provided in Chapter 232, and state at this time what rate would be allowed under that law for hauling wheat from Fairfax to Minneapolis, 93 miles.

A. It would be 7.6 cents.

Q. Now, if you are enabled to secure remuneration by hauling wheat 199 miles for 8½ cents per hundred, will you please explain how the law of Minnesota requiring you to haul wheat for 93 miles for 7.6 cents can be confiscatory?

A. That is a long question. If the Minneapolis & St. Louis road could haul enough traffic on 7.6 cents per 100 pounds on wheat, it could make money on it hauling it from Fairfax to

Minneapolis; if it has tonnage enough on the 8½ cent proportion from Fairfax to Albert Lea, it can earn net money on it; but when you come to take the total tonnage of a railroad and its total earnings that do not exceed $2,500 per mile (the total freight earnings do not exceed $2,500 per mile) you cannot make money on the 7.6 cent rate from Fairfax, and you cannot make money on the 8½ cent proportion to Albert Lea—and the Minneapolis & St. Louis road absolutely does not make any money out of any of its traffic, that is the fact, and is not now making any money out of its traffic, so that any further reduction in these rates absolutely makes your deficit just so much more than it was at the end of this fiscal year. I have to take my traffic as a whole, I can't segregate, I can't separate the items; I don't make comparison as between rates, I can't. A comparison of rates, Mr. O'Brien, could not argue with me in a determination of those figures that we have been discussing, that is, the mere comparison, except that it has the influence to reduce.

Q. What is your present rate from Dunnell, Minnesota, upon wheat to Minneapolis?

A. The rate from Dunnell on wheat to Minneapolis is eleven cents.

Q. Do you take wheat from Dunnell and haul it to Minneapolis and thence to Albert Lea and there deliver it to the Illinois Central road for shipment to Chicago?

A. We do and can.

Q. And what is the rate on that routing from Dunnell to Chicago?

A. We open up all of our junctions to all of our manufacturers and shippers. That is the policy of our road.

Q. What is the rate?

A. 17 cents, Mr. O'Brien.

Mr. BUTLER: 11 and 7½ is that? or is this a variance?

WITNESS: It varies in southern Minnesota some. The arbi-

trary, Mr. O'Brien, reduces as you get towards Chicago. It is fair to say that it is a constant conflict between Chicago and Minneapolis as to those rates. Some of the Chicago lines feel that they have not as great an interest in Minneapolis as they have in Chicago, at least that is the way we look at it. Our interest is entirely there, and that sometimes brings down the difference or arbitrary as between the rates in the southern half of Minnesota to less than 7½ cents.

Q. The rate is 17 cents, is it?

A. 17 cents.

Q. On which on that shipment the Minneapolis & St. Louis would retain 9?

A. 9½ cents.

Q. Is that remunerative for that service?

A. Yes, I should say that it was, taking the whole situation into consideration.

The MASTER: You mean from Dunnell to Chicago?

Mr. O'BRIEN: Dunnell to Chicago. Dunnell is at this star on the map here.

The MASTER: That is, you mean whether the rate from Dunnell to Chicago by the way of Minneapolis at 17 cents is remunerative, that is your question?

Mr. O'BRIEN: No, if the proportion, the 9½ cents is.

The MASTER: That is what I wanted to know.

Q. Is that 9½ cents of that rate, retained by the Minneapolis & St. Louis, remunerative to it for that service?

A. It is a mighty hard thing to answer that question.

Q. Well, you take all of it you can get, don't you?

A. Yes, and if we could get more, the more remunerative it would be. We might haul a small amount at a loss. If we could develop a traffic we could haul it at a profit, but that doesn't determine our—is not the compelling force in making that rate.

Mr. DURMENT: No, but you don't mean to say that in the

past year or two years you have been hauling that wheat from Dunnell to Minneapolis through Albert Lea to Chicago and taking 9½ cents and losing money on it, do you?

WITNESS: Mr. Durment, I say this: We have hauled—we are doing our business at a loss on the Minneapolis & St. Louis railroad. Now, I can't tell just how much we lose on the 9½ cent rate; it is impossible for me to segregate it and determine that. When you get down to the line where your gross earnings are not paying your expenses, I can't determine whether that 9½ cent rate is losing me a little or making me a little.

Mr. DURMENT: And you can't tell, then, whether if you got 9½ cents for hauling your wheat from Dunnell to Minneapolis and from Minneapolis to Albert Lea you are paying for the privilege or not?

WITNESS: It would be very difficult to tell it under our particular conditions.

Mr. DURMENT: You can't tell?

WITNESS: I can't tell.

Q. Now, the length of that haul would be 258 miles, would it not, over the Minneapolis & St. Louis railway?

A. That is, from Dunnell to Albert Lea?

Q. From Dunnell to Albert Lea.

A. Yes.

Q. Is that right?

A. Yes.

Q. The distance from Dunnell to Minneapolis is 152 miles?

A. Yes, about that.

Q. Will you please turn to Chapter 232 and state the rate that is allowed by that chapter for hauling wheat from Dunnell to Minneapolis?

A. That would be 8.8 cents.

Q. That is within .7 of a cent of what you receive for hauling the wheat 258 miles?

A. Yes.

Q. Now, will you please take Chapter 232 and state what is the rate allowed by that chapter for a haul of 258 miles?

A. 10.3 cents. Your other question asked me the reasonableness of that, in the comparison of those rates.

Mr. DURMENT: You were asked whether it would be remunerative.

WITNESS: Well, you see you are speaking of the Chicago rate—our proportion of the Chicago rate. Competition fixes the Chicago rate, and I have no power to make the division beyond what we have. If it was not remunerative we would have to take it or go out of the business altogether. We don't fix the 17 cent rate to Chicago. That is fixed by competition and by competitors, and 9½ cents is the best we can get out of it. I wouldn't take 9½ cents if I could get more.

Mr. DURMENT: No, I suppose we might admit that.

Q. I think this morning you gave us some illustrations as to the way in which you estimated the loss that you had sustained upon coal; you also have a commerce in coal, which is interstate commerce?

A. Yes.

Q. Is any coal shipped upon your road from Minnesota to Iowa?

A. Southbound?

Q. Yes.

A. For instance, from Duluth?

Q. Yes.

A. There might be some, a very inconsequential amount, I couldn't say unless I looked it up; no such traffic as we invite or care for. There may be some small amount of it.

Q. Then the loss which your road would sustain on its interstate business, so far as coal is concerned, is a loss upon coal coming from the south or east to Minnesota?

A. That would be the severest loss, the reduction in the

coal rates coming from the south north, not from Duluth, for instance, to Iowa.

Q. A coal mine on your system is located at Centerville, Iowa, is it not?

A. Yes, on the Albia & Centerville Railroad.

Q. And what is the character of coal mined there?

A. Well, the mine that would ship coal over the Albia & Central and Iowa Central and M. & St. L. roads would be graded as a very good domestic coal, it is walnut block, and is as good a coal as there is in Iowa for domestic purposes.

Q. Of course it is a soft coal?

A. A very soft coal; a good coal.

Q. Now, what is the rate from Centerville, Iowa?

A. We haven't an Iowa freight tariff here.

Q. You haven't the information with you to give me the rate from Centerville to Huntington?

A. No.

Q. You also received, from the Illinois Central, coal from the Illinois coal-fields?

A. Yes.

Q. Situated where?

A. Well, all through Central Illinois.

Q. You spoke of Peoria, I think.

A. Well, that is on the Iowa Central, over whose traffic I hold the same position that I do on the Minneapolis & St. Louis; that traffic would travel by the Iowa Central and come to the Minneapolis & St. Louis road at Albert Lea or possibly at Corwith, Iowa.

Q. Do you receive coal from that road destined for Minneapolis and St. Paul?

A. Over the Iowa Central?

Q. Yes.

A. From Peoria?

Q. Yes.

A. Yes.

Q. What is the rate from Peoria to Minneapolis?

A. $1.40 on soft coal.

Q. And what is the distance?

A. About 500 miles; it is somewhere between 470 and 500 miles, the total mileage, Mr. O'Brien.

Q. Of that rate what proportion is absorbed by the Iowa Central?

A. If the coal traffic was—

Q. I am speaking of the actual shipments under your—

A. Well, actually the shipments that make up these figures, the Peoria traffic for Minneapolis would come to the M. & St. L. road at Albert Lea, and, after an arbitrary of $3 per car would be deducted, the balance of the earnings would be prorated on practically a mileage basis; I think 22 per cent. of the balance would apply to the M. & St. L. road.

Q. How many tons in a car?

A. With us I think our average for a year (and I have looked into that very carefully) is about 22½ tons. That is the highest rate. There are lower rates that we do not participate in.

Q. That would be $31.50 a car on an average?

A. Yes.

Q. From which should be deducted $3, leaving $28.50 for 22½ tons?

A. Yes.

Q. That would be about $1.26 a ton, would it not, the net?

A. If the car contained 22½ tons.

Q. Of which you would receive 22 per cent. of what figure?

A. We get 22 per cent. of the $1.40.

Q. You would get 22 per cent. of the $1.26?

A. No, we get 22 per cent. of the $1.40.

Q. You told me that there was an arbitrary charge of $3 taken out.

A. Yes.

Q. That leaves about $1.26 per ton?

A. To the Iowa Central road.

Q. To both roads.

A. To both roads; that is right.

Q. Of which you get about 22 per cent?

A. That is right, we get 22 per cent.

Q. You get 27.72 cents?

A. $27.72, is that it?

Q. No, you get 27 cents per ton.

A. Yes.

Q. 27.72 cents per ton?

A. That terminal goes to the M. & St. L., the $3 goes to the M. & St. L. Add to that.

Q. I thought you said that was deducted and retained by the Iowa Central.

A. Oh, no, the Minneapolis terminal, the Minneapolis & St. Louis gets the terminal.

Mr. DURMENT: I understood it that the Iowa Central retained it.

WITNESS: No, the Minneapolis & St. Louis retain it for its terminal at Minneapolis.

Mr. BUTLER: I think you misspoke yourself.

Q. That is about ten cents a ton?

A. Yes, a little more than that at that rate; but in any event, 41 cents a ton would be what the Minneapolis & St. Louis would get, gross, out of that transaction. That includes the terminal and the road haul on simply 22½ tons, which I said was about the average by 41 and you would get the Minneapolis & St. Louis total earnings.

Q. Well, I want to get it per ton. This gentleman, whose name I don't know who is assisting you, says 41 cents; is that right?

A. Yes, sir.

Q. You think that 41 cents per ton would be right?

A. Yes, that would be right in that case, and about the average, probably.

Q. Is that remunerative?

A. No, absolutely not.

Q. Is it within 75 per cent. of being remunerative?

A. The Minneapolis & St. Louis road does all of its coal traffic at a loss, I think, absolutely, and I don't believe that the Minneapolis & St. Louis road could handle that freight from Albert Lea to Minneapolis, put it on its terminals, pay for its equipment and all that sort of thing, and make money at anything less than a dollar a ton. I think it should have a dollar a ton for the 108-mile haul.

Mr. DURMENT: And it gets 41 cents?

WITNESS: It gets 41 cents.

Q. That is, it loses 60 cents on every ton it hauls?

A. I actually believe that is true.

Q. Well, I notice that in Ex. 14, $19,172.93 of the loss which you claim you would sustain is on soft coal.

A. I presume so.

Q. Which is a loss of 19.85 per cent.

A. That is right. That is what the figures say.

Q. But you are losing 60 per cent.—you are losing 150 per cent. of the amount of your receipts; you are losing 150 per cent. of the amount of your receipts of the soft coal you receive from the Iowa Central, under a voluntary arrangement?

A. No, there is no voluntary arrangement about it. We are compelled to make the same rate from Peoria to Minneapolis on coal that our competitors do, and we protested against the rate because it is unremunerative from the very first moment; but if the Iowa Central road and the Minneapolis & St. Louis road work together as a unit and give its shippers of coal from Illinois and its manufacturers the right to get coal cheap, if we keep those manufacturing establishments alive on

our road, we have got to make the same rates that other people make. Competition fixed that rate for us, and we don't like the rate, it is unremunerative in itself, and has been from the very first, but I didn't take that into consideration, and could not, when I made those figures, for this reason: I used an exact figure and an exact principle; I had certain factors, I took the exact reduction that would be made in the $1.40 rate and applied that to the tonnage and figured it out in that way because it was a question with me whether or not we could engage in that traffic without such a terrific loss as to close up one of the railroads.

Q. In doing that did you still allow the Iowa Central the same amount that they are receiving now?

A. No; I and the Iowa Central road prorated the reduction. In other words, if the rate was reduced 20 cents a ton, the Iowa Central stood its share, and those figures would only show the M. & St. L.'s proportion based upon the Iowa Central company's standing its share of the loss.

Mr. BUTLER: That last question and answer I suppose refer to the figures in Ex. 14?

Mr. O'BRIEN: Yes.

WITNESS: Yes, he has Ex. 14 before him.

Q. You didn't, then, allow the present full receipt to the Iowa Central as you did in the case of wheat?

A. No.

Q. But prorated with them. (No audible answer.)

By Mr. DURMENT:

Q. Mr. Tittemore, I understood you in answering with reference to this rate from Peoria to Minneapolis of $1.40 per ton on soft coal, that there were other rates lower, in which the Minneapolis & St. Louis didn't participate; what did you mean?

A. I should have said that there are other rates. Now, let me get it correct and I think we can have an understanding.

There are proportions of through rates lower than $1.40 applying north of Peoria to Minneapolis and we do not participate in those lower rates. For instance, in the case of some rates from Illinois to Minneapolis of $1.90, the roads south of Peoria or Streeter would take seventy cents and the road north to Minneapolis take $1.20. We never have done that because we considered the $1.40 rate down absolutely to bed-rock for us.

Q. Well, you mean, then, that some other roads make lower rates?

A. I mean that they accept less than we can or do. We consider that the $1.40 rate is down to bed-rock, down to loss.

Q. You mean, then, that you don't haul any soft coal from Albert Lea to Minneapolis for less than $1.40?

Mr. BUTLER: No, he didn't say that.

WITNESS: From Peoria.

Q. Well, then, do you haul any soft coal from any other points in Illinois to Minneapolis over your road for which you get less than the 41 cents a ton you get from Albert Lea on the Peoria coal?

A. No, I think not from Illinois.

Q. Do you from Iowa or anywhere else?

A. No, we have no surplus coal in Iowa to ship anywhere. It is all used for locomotives, steam purposes there. There might be a little steam-coal coming in here, and we could get less than 41 cents on that, perhaps, but to keep your mines going you are obliged to throw in these open cars for the waste coal. Now, it accumulates on your tracks, and we are glad to get rid of it any way we can and release the equipment; we haul that even at an absolute loss, but are compelled to do it in order to keep the mine going so we can get the "lump" protected—which sometimes pays us a profit.

Q. You haul your Peoria coal at an absolute loss when you get 41 cents?

A. Yes, sir.

Q. How much greater loss do you sustain on the coal you haul per mile, as you have spoken of, than on your Peoria coal?

A. I can't figure the percentage of loss on our coal business; I can only say that it is demonstrable that we do all of our coal business at a loss on both roads.

Q. How much of it do you haul at less than 41 cents from Albert Lea to Minneapolis, and what kind of coal is it?

A. I think that is about the minimum, except in the case of steam-coal that we haul from Oskaloosa to Minneapolis at about a dollar rate.

Q. For your road?

A. For the entire haul.

Q. What would your road get of that, what do you get?

A. I couldn't tell you, because I don't remember the division. That is not based on the same division. I think that rate is $1.15 and we get 40 per cent. of that, the M. & St. L.

Q. From Albert Lea?

A. From Albert Lea.

Q. Then you don't get any less?

A. No. Mr. Durment, we consider that the proportion that we get out of the Peoria rate as being the very least we can haul that stuff for.

Q. Well, I understand you say that you can't make yourself whole for that.

A. We can't, but when you come to take the car to load it back with something else, we must invite our equipment into Minneapolis, and we are glad to bring it in with something rather than to bring it empty. That is the only reason for our joining in the low rate.

The MASTER: It is to save the returning of empties?

WITNESS: Well, it would not pay us to haul empties up to Minneapolis, for instance, your Honor, to take seven-and-a-half-cent wheat out and haul it 500 miles. We must have the cars

come up this way. Now, we are glad to have them loaded with coal at that rate rather than to haul them empty.

The MASTER: That is it, rather than to return empty, you take the coal at less than you would ordinarily haul it?

WITNESS: Yes. But the rate, your Honor, is fixed by another railroad for us.

Q. That brings up the question I want to ask about wheat: What proportion of your wheat taken from your lines in Minnesota goes to Chicago by way of Minneapolis?

A. I couldn't say, Mr. Durment, but I can look that up for you if you desire to have me make a note of that question.

Q. I wish you would.

Mr. BUTLER: That is wheat *via* Minneapolis; wheat from Minnesota points, or Minnesota and Dakota points?

Mr. DURMENT: Well, I would like to have both, separate.

WITNESS: Wheat and flour, you mean?

Q. Well, we have been talking about the wheat arbitrary.

A. Yes, that is on wheat and flour.

Mr. BUTLER: The tonnage better cover the same period that these tables cover.

Mr. DURMENT: Yes, that is all right. I had that in mind when I spoke.

WITNESS: The tonnage *via*—?

Mr. BUTLER: To Chicago *via* Minneapolis.

Mr. DURMENT: What I meant was what proportion of your wheat shipments was taken to Chicago by way of Minneapolis, what proportion of that emanates in Minnesota and what portion of that emanates in South Dakota.

Q. I would like you to explain, if you will, again, (I think you have, perhaps,) why, when the rate on hard coal, or soft coal either, is reduced from Duluth south of Minnesota points, you have to make a similar reduction from Peoria north to Minnesota.

A. The rate from Manitowoc, Wisconsin, and Milwaukee,

Wisconsin, to Lake Michigan ports is the same rate or practically the same rate as from Duluth and the coal-docks, and the facilities at those points are based or fixed upon what the rate from Duluth was. That fixes the rate from Chicago and we feel that the rate from Peoria cannot be higher, beyond a certain point, higher than those rates and do any business. Our $1.40 rate has not been low enough to do any great amount of business into Minneapolis.

Q. Then, if I understand it, unless the same rate is made from the Peoria fields into Minneapolis as is made from Duluth to Minneapolis, and probably from Milwaukee and Manitowoc into Minneapolis, the Peoria field cannot compete.

A. Cannot compete.

Mr. BUTLER: You mean a corresponding rate rather than the same rate, don't you?

Mr. DURMENT: Well, a corresponding rate.

Q. Then that field cannot compete?

A. Cannot compete, and the road cannot compete.

Q. And your road can't haul coal from there and compete?

A. That is it.

Q. But if the corresponding reduction were not made, I suppose then the coal from the other points—that is, the other pionts excluding Peoria—would save Minneapolis and tributary territory?

A. If they made the reductions and we did not?

Q. Yes.

A. Yes.

Q. And would that include any considerable part of the field your road supplies?

A. No; our coal comes from Peoria and our own mines north of Peoria out about thirty-five miles.

Q. Does the Minneapolis & St. Louis own mines north?

A. No, the Iowa Central.

Q. Then the territory which your road supplies must be fur-

nished with coal from the Peoria district, is that it?

A. Not altogether.

Q. Well, where from, then?

A. Well, it can be furnished some, the Minneapolis & St. Louis field can be furnished some from the Illinois Central mines.

Q. But the same rule would hold there as would at the Peoria mines?

A. Yes.

Q. As to the corresponding rates?

A. Yes.

Q. But assume that the reduction is made from Duluth to Minneapolis and those points and no reduction is made from points on the Illinois Central or the Iowa Central from the Peoria or Illinois fields that goes over your lines, then where would the territory which your road hauls this coal to, be supplied with coal from?

A. More than likely from Duluth if Duluth had the lowest rate.

Q. From Duluth?

A. Yes.

Q. Well, you would have the same chance to haul the coal to the territory your road supplies as you would to the other points, wouldn't you?

A. Yes, but how could we get our cars back?

Q. Well, I don't know about that.

A. We could supply from Duluth, no question about that, if we had the coal.

Q. Then it would not result in a destruction of your coal hauling if the rates were reduced from Duluth to Minneapolis and not from the other field to Minneapolis?

A. Our people would get warm some way.

Q. Oh, I suppose your people would get warm some way, of course, but your road would haul coal, wouldn't it, for prac-

ically the same territory whether it came from the Peoria and Illinois fields or the others?

A. I think not. I think the Chicago, Milwaukee & St. Paul road, the Chicago & Alton road, the Burlington road, the Rock Island road, the C. & E. I. road, (all of which roads own their own coal and sell coal), would invade our territory so that it would leave us with scarcely any coal traffic at all.

Q. Oh, then they would put it in at a cheaper rate?

A. Probably they would. They would meet the Duluth rate. There is no such thing possible as the reduction of the Duluth rate without the reduction from the other points. We might not reduce, Mr. Durment, but the other roads must reduce.

Q. Well, the proposition is this, that coal in the Peoria field and the points you ship from is the Iowa Central's coal-mine, isn't it?

A. Well, there is coal on the Burlington that we haul.

Q. The Iowa Central owns a mine of its own, you say, in Illinois, doesn't it?

A. No.

Q. Well, you spoke of "our mines" what did you mean by that?

A. When?

Q. A little while ago; "we get some coal from our own mines," you say.

A. Some coal from our own mine in Iowa.

Q. Well, the Iowa Central road runs right into a coal-field in Illinois, does it?

A. Yes.

Q. The Illinois Central runs through a coal-field, doesn't it?

A. Yes.

Q. And the Iowa Central gets the biggest part of the freight or rate from the fields to Minneapolis, doesn't it?

A. Yes, because it is hauled.

Q. And so does the Illinois Central?

A. That warrants it.

Q. The Illinois Central does, doesn't it?

A. Yes.

Q. Then how can the Illinois Central get into Minneapolis except over your line?

A. They get in over the Chicago, Milwaukee & St. Paul,—it did, for years.

Q. But you have a traffic arrangement with them, haven't you?

A. The same as we have with all other roads; there is no contract. If the Minneapolis & St. Louis road was not fair to the Iowa Central, they could tie up with some other road at any time.

Q. Then you are still in a position where the Illinois Central and the Iowa Central can "hog" it and compel you to take whatever they will allow you to bring into the country, are you?

A. They don't do that.

Q. But they can?

A. Why, they could, I suppose. I never knew them to.

Q. When it gets to the point that you have to stand the reduction, that is pretty nearly doing it, isn't it?

A. I didn't say that the M. & St. L. had to stand all the reduction in the coal rates; I have testified that the other roads prorate that reduction.

Q. Well, you have said that in Minnesota you had to take what the other roads would allow you.

Mr. BUTLER: On coal.

A. I didn't say that. On wheat, I said.

Q. Yes, on coal from Duluth.

A. Yes, I did say that,—No, I said that they demanded a certain rate.

Q. Yes, they demanded a certain rate.

A. Now, they are perfectly willing that we shall make our rates higher than we do and get all we please, but competition

won't let us advance our rates, so we are compelled to take the balance—

Q. Why are you not in a position to fix your rate as they do and let the Illinois Central and the Iowa Central either pay it or hold their traffic?

A. How could we do that as against the competition of the other lines coming in all around us? Take our Albert Lea division, where there is a mill at nearly every point and a junction at every point, with the Milwaukee road hauling its coal across from its Lake Michigan ports, if they bring the coal into these manufacturing establishments at junction points they will get the out-freight; more than likely a car will stand there to be loaded with flour and it will go out that way—they have the same rates out that we have out. Now, there is a competitive feature between both, and if it was not for that, as I have explained once before, we probably would not be in that coal traffic.

Q. Then the situation, as I gather it now, is this, that your road is so situated with reference to other roads that you have got to take what you can get if you hold any traffic, is that it?

A. Well, pretty nearly. Competition pretty nearly fixes our rates.

Q. In other words, you are so situated, that if you don't do as the others say, they can route it over another road and cut your field from under you, is that it?

A. They can't cut some of our field from under us, no.

The MASTER: Take this coal business that you are speaking about now,—the Milwaukee & St. Paul and some of the other roads you mentioned are competitors of your road or would be?

WITNESS: Yes, and for all of this business along our Albert Lea division.

The MASTER: That is what you claim.

Q. That is it, and if you don't haul it at such rates, when it

is delivered to you over the Iowa Central or the Illinois Central as they are willing you should have, then it would go over the other roads or the other roads would get into these same places and supply that same territory you now supply?

A. If we didn't have any rates we would have to get them from the other railroads if the other railroads make the rates. As it is now, we compete and make the rates, and the losses in these statements have been figured out upon that theory—that to compete we would have to reduce the rates from every point in the same proportion as they are reduced in other portions based upon years and years of experience. We have not used any novel basis.

Q. Then your theory is that the rates would necessarily be reduced with these competing roads into Minneapolis from the south if they were reduced from Duluth down and that if you did not reduce them the other roads would, anyway, and you would lose all your share of the traffic?

A. If the state of Minnesota reduces the rates from Duluth, for instance, to Jordan, or to any point on the Minneapolis & St. Louis railroad, a similar reduction will be made by the Northwestern road from Manitowoc, Wisconsin, to Waseca, for instance. Now, we have no interest in the rate from Manitowoc, Wisconsin, to Waseca, we have no interest in the flour traffic out from Waseca east over the Northwestern road, but we have a great interest to keep our mill at Waseca on a parity so that it can make flour as cheap and pay as much for grain west on our road, and for that reason we merely say, "Here, we will make the same rate from Peoria to Waseca that is made from Manitowoc to Waseca predicated upon the rate that is made from Gladstone to Waseca, predicated upon the statute rate that is made from Duluth to Waseca."

Q. Well, I think I understand it, but I want to be certain. You say that if the statute of Minnesota compels a reduction on coal in Minnesota from Duluth to points on your line, then

other roads, in your opinion, will make a corresponding reduction in rates from eastern points outside of the state of Minnesota into Minnesota?

A. They always have done that.

Q. They always have done that and you assume they will do it?

A. I do.

Q. Your figuring of this loss is based on the assumption that they will do that?

A. Yes.

Q. And that if they do it your road must do it in order to hold the business?

A. We would be compelled, independently, to do it from our Illinois mines, for instance, to all of our main line points if Duluth was reduced.

Q. Well, now, why?

A. For the reason that the Duluth rate is reduced. Take the Milwaukee Railroad, she has a traffic contract that will let her haul business at a distance tariff rate fixed by the State Board from Duluth, to Chaska, where there are large brick manufacturing establishments. Now, we have got to make the same rate from Peoria to Chaska in order to get some of that.

Q. Well, that is the same thing as you said before, the same principle.

A. You can't get away from that principle in making rates.

Q. That, in your opinion, the minute the rate in Minnesota is reduced by law, some other road which competes with your road in Minnesota will make a corresponding reduction from traffic outside of the state, interstate rates—

A. Well, in this case—

Q. —that would compel you to meet it?

A. In this case I was differentiating from that in this way, in the case of the Milwaukee road making the statute rate from Duluth to Chaska for the brick works or the beet-sugar factory

there, we would be compelled, independently, in that case, without regard to what anybody else did, to make the rate from our Illinois fields to that point to enable us to compete at all, the competition there being more directly between our road and the Milwaukee and no third party coming in.

Q. Well, as I get the point it is that, in this particular case you notice, there would be no competition except with the Milwaukee road, which makes a haul wholly in the state of Minnesota?

A. Yes.

Q. But in the other cases, (in many of the cases) the competition would arise from the fact that other roads would make a reduction on interstate haul in the state of Minnesota and you would be compelled to meet it in order to get the business?

A. Yes, sir.

Q. If they did not make the reduction then you would not be compelled to make it excepting in the Milwaukee case or in a case like that?

A. Well, I would have to have each case before me before I could determine. In my office if the case came up I would have to take each case under advisement.

Q. This commodity-rate act, as I recall it, has a provision in it that if the rates are shown to be unreasonable or unfair as to any road, the Railroad & Warehouse Commission may fix another rate higher or permit another rate higher to be fixed; suppose, as to the Minneapolis & St. Louis road, it were permitted, either by an act passed or by action of the Railroad & Warehouse Commission to charge such rates as it considers reasonable without regard to this schedule fixed in the commodity-rate act, but all the other roads, the strong roads, were still under the control of this act, to what extent would that relieve your road?

A. Well, if the State of Minnesota guarantees our earnings on a paying basis we can ignore competition.

Q. The State does not do that. The question is, upon existng conditions, under that state of facts, what position would it eave your road in?

A. Well, if the State Railroad & Warehouse Commission ıcted upon their own initiative and protected us at once, that might make a difference, but they would have to protect our industries, that must have this coal on a competing basis or this wheat on a competing basis.

Q. We don't seem to understand each other.

A. I guess not.

Q. Suppose that, as to the Minneapolis & St. Louis road, this commodity rate act were wiped out and it was left free to make any rate it saw fit but that, as to every other road in the state, it was still in force, now what would be the effect on your traffic?

A. It would knock us completely out.

Q. Why?

A. Because we couldn't compete anywhere.

Q. Why not?

A. Because our rates would be higher. These are the lower rates.

Q. Well, but you would be at liberty to make whatever rates you saw fit.

A. If we made lower rates than that to meet competition our deficit would be just that much more than it was this year.

Q. And then you would be between the "devil and the deep sea"?

A. Yes.

Q. Then, as I make it out, you would have to go out of business?

A. I stated our gross earnings last year were $2500 per mile, and I think that is as near it as we want to continue in business.

Q. You mentioned that if your road was not bound by that

commodity-rate act at all, you still could not compete with the other roads provided they were.

Mr. How: Without coming down to that same basis, you mean?

Mr. DURMENT: Well, I don't care how.

A. I don't get your question, but if you mean, Mr. Durment, that if all the other roads adopted this schedule and we remained upon our present schedule, it would ruin our business and ruin all of the industries on our road that are fixed or located upon a competitive basis; upon the old regulation we can't change a rate without we change business.

Q. Well, then, I will put the question in another form, (maybe we will get where we understand each other directly.) Suppose that the Minneapolis & St. Louis road were relieved from the commodity-rate act and at liberty to make such rates as it saw fit and all the other roads in Minnesota—well, I will say all the other roads except the Chicago Great Western road —were bound by this act, what would the Minneapolis & St. Louis do as to the rates, would it raise them or lower them?

A. It would lower them and it would mean a receivership at once.

Q. It would lower them?

A. Yes, sir,—destroy their net revenue.

Q. That is to say, your proposition, in plain language, is this, that you have got to make the same rate the other roads do make, whether you can make money at it or not?

A. That is it. That is what a railroad is for.

Q. And that, so far as your freight rate is concerned, it does not depend upon the cost of operation nor the particular price received for freight for its work, that it shall live and make money, but it depends upon the rates the other roads make?

A. It depends upon competition largely, Mr. Durment.

Q. That is, it depends upon what the other roads make?

A. Well, in a competitive sense, yes.

Q. That is to say, you have have got to meet the rates they fix?

A. We must. You see that cuts two ways. I want to be plain in that. If we made a higher rate than the other roads, we would not only lose the traffic (that particular traffic) but we would dry up the industries on our road and would lose all that traffic that is incident to the rate and that is protected and built upon the rate.

Q. And if the other roads can afford to carry out their rates and make money on those rates (and do make money) then you have got to go out of business?

Mr. BUTLER: It wouldn't make any difference whether they make money or not, would it?

Mr. DURMENT: No, but it might make a difference whether they would have to do it upon these rates.

A. Mr. Durment, I want to understand the question, because I don't like to go away without answering a question as clearly as I can. I think if that schedule applied to the other rates, leaving us free to do as we pleased, it would put the M. & St. L. in such a predicament as it could not survive sixty days, if the truth would be known as to its condition.

Q. That is, the trouble then with these rates, so far as the Minneapolis & St. Louis road is concerned, is not with the rates themselves but it is with the competition?

A. Well, you see I hold that competition makes all rates in this country. I have been thirty years in the business and competition has always forced the rates I make, I never was independent in a single rate that I ever did make.

By Mr. O'BRIEN:

Q. For the purpose of following up this last testimony you have given, the objection which you make to these rates, so far as the coal rate is concerned, is that it would compel you to adopt such a low rate from the Illinois coal-fields that it would compel you to transact that business at a loss and with the

disastrous results that you have described?

A. That is what I intended to say, Mr. O'Brien.

Q. As a matter of fact, the rates prescribed for coal hauled within the state of Minnesota are much larger than the present rates which you are receiving for coal hauled from the Illinois coal-fields, are they not?

A. I think that is true of a proportion of the rate.

Q. For instance, you receive 41 cents for a haul of soft coal from Albert Lea to Minneapolis per ton, is that right?

A. Yes.

Q. That is a distance of 106 miles?

A. Yes.

Q. Now, the rate allowed by Chapter 232 for that haul would be 84 cents?

A. Yes.

Q. So that the rate allowed by Chapter 232 is much higher than the rate which you now get?

A. But there is no coal at Albert Lea to haul. I have got to have coal and the rate together.

Q. There is plenty of coal at Minneapolis and St. Paul.

A. To go to Albert Lea, do you mean?

Q. Yes, to go anywhere you go.

A. That is true, but the kind of coal that we use at our manufacturing industries there we do not get at Duluth and cannot get at Duluth because we compete with the coal that comes from Illinois *via* other lines into those junctions, Mr. O'Brien.

Q. And this rate given by Chapter 232 has no reference to the rate charged by you for coal from the coal-fields of Illinois, because that is interstate commerce?

A. Not the rate between Minneapolis and Albert Lea—does not have any reference.

Q. And it does not, so far as a legal necessity is concerned affect your rate at all, does it?

Mr. BUTLER: Well, that is really objectionable, in a technical view.

Mr. O'BRIEN: You know the only thing you can do, Mr. Butler, is to note your objection.

Mr. BUTLER: Yes, but I wanted to suggest that it won't help any to have our witnesses swear to legal propositions that will be subsequently debated.

Mr. O'BRIEN: Well, you never can convince me; there is no use in arguing with me about it because I want to ask that question.

The MASTER: Objection noted. The witness may answer the question if he can.

Q. You would not understand that you were violating the law of Minnesota if you established an interstate rate that was different from that, would you?

A. No.

Q. So that, in considering the question as to whether this is a fair rate or not, you did not take into consideration at all whether or not the rate is in itself compensatory?

A. That is not the primary factor in fixing the interstate rate, Mr. O'Brien.

Q. No, but I am talking of the Minnesota rate. In this argument that you make with regard to receivership proceedings, all this gloomy forecasting, you do not take into consideration at all as to whether or not the rate is just in itself for a haul of coal so many miles for so much per ton?

A. Yes, I have taken that into consideration so far as our own business would be concerned.

Q. Because you are hauling all the coal you can get, at half that rate.

A. No, we are not hauling all we can get, because if we can get—I don't think I have made myself plain all this afternoon on that point and I might as well quit.

Mr. DURMENT: Oh, no.

WITNESS: You have got to have a tonnage, and a great tonnage, if you have a low rate. If you have a small tonnage, you must have a larger rate in order to make any profit in the railroad business. Now, we lack the tonnage and it looks to me as though we were going to lack the rate. That is the point I want to make.

Q. I don't believe that anything I could say would reassure you.

A. Not under these conditions.

Q. But what we are trying to do, so we will be able to understand each other, is to ascertain what is a fair rate for carrying coal a certain number of miles in the state of Minnesota.

A. You never can determine it by the business of the M. & St. L. Railroad.

Mr. DURMENT: Why not?

WITNESS: Because we haven't either the quantity of coal, we haven't got the proper rate. Competition fixes the rate. Then the division of the rate is another consideration. There is so much outside of the faculty alone of making the rate that we are not arbiters of it at all. Competition fixes all of my through rates with the M. & St. L. Railroad.

Mr. DURMENT: Then there is no way of telling, from the business of the Minneapolis & St. Louis, what a fair rate would be?

WITNESS: When I look at the annual report and see the deficits, I consider we have done our business at a loss.

Q. Assuming that there is a certain quantity of coal on the docks at Duluth of the same grade and value as the coal in the Illinois coal-mines, and assuming that the price of that coal on the docks at Duluth is the same as the price at the mines in Illinois, don't you think that the people of Minnesota are entitled to that coal at that price, with a freight added which is fair in itself, without reference to the competition

between the coal-fields of Illinois or the coal piled upon the docks at Duluth?

A. That assumption, of course, would be erroneous because no such condition ever existed and probably never will exist.

Q. I ask you to assume it. Assuming that to be true, are they not entitled to that?

A. We couldn't get the coal from Duluth because the coal supply at Duluth is controlled by—

Q. Well, will you answer that question?

A. Well, I can't answer that question.

Q. You can't answer it?

A. No, it seems to me so extravagant that—

Q. And you have not taken that into consideration at all?

A. I have not considered that the Minneapolis & St. Louis road could under any circumstances protect itself from competition at Duluth because its principal competitors there control the coal supply and they would not give us any opportunity for defeating them at competing points. We would have a great time, for instance, Mr. O'Brien, trying to compete out here against the Great Northern road by buying coal from Mr. Hill's road, wouldn't we?

Q. Then the large roads with traffic facilities at Duluth control the situation?

A. So far as we are concerned I think they control it from Duluth.

Q. And the necessity for enabling your road to earn dividends controls the rates which the State may enforce upon the heavy roads?

A. What was that question?

Q. The necessity for establishing rates which will enable you to earn compensation controls the State in fixing rates upon heavy roads? We are now speaking of all these cases as a whole.

A. Well, I say that we protect ourselves somewhat from Illinois.

Q. So that so far as the State is concerned, it is absolutely powerless, under your system, under your theory?

A. No, the State is not powerless under my theory, because I would take those things, if I were the State, into consideration that a traffic man takes into consideration in fixing my rates.

Q. But we are testifying as to whether or not these rates are reasonable or unreasonable. You have not taken into consideration at all what is a reasonable rate for the transportation of coal for any given distance?

A. No, except on our own road, under the conditions prevailing on our own road.

Q. And you claim that the rates prescribed by Chapter 232, Laws of 1907, for soft coal in carload lots, is confiscatory although, as a matter of fact, it is double the rate which you receive under your voluntary arrangement with the roads running to Illinois for the same service?

A. Well, I don't say that that item alone would confiscate the Minneapolis & St. Louis railroad, but I say that that schedule would do it if applied to all of its business. I don't say that coal alone would do it, because it is a very small proportion of its business.

Q. Now, calling your attention to the third item in each division, "other interstate traffic," will you please describe what that is?

A. Well, that is traffic outside of the state of Minnesota, Mr. O'Brien, that would be affected by the application of these rates on Minnesota interstate traffic. For instance,—

Mr. BUTLER: Perhaps you can use the map of your own Company to show that.

Adjourned until Tuesday morning, August 11th.

FEDERAL BUILDING, St. Paul, Minn., Tuesday, August 11, 1908, the hearing was resumed at 10 A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified:

By Mr. O'BRIEN:

Q. Mr. Tittemore, you stated yesterday that if the schedule of rates provided by Chapter 232 were to be enforced, the result would be to put the Minneapolis & St. Louis Railroad Company in the hands of a receiver within sixty days.

A. It would bankrupt them.

Q. That, of course, is upon the assumption that these estimates that you have made as to the reductions in revenue are correct, as shown in exhibits 14, 15, 16 and 17?

A. I don't mean to say that other conditions might not do it, but I do say that would do it.

Q. That is upon the assumption that these computations that you have caused to be made as shown by exhibits 14, 15, 16 and 17 are correct?

A. All, or in part, yes.

Q. Substantially correct?

A. What I mean to say is that it would not take all of this loss to do it.

Q. That they are substantially correct?

A. They are substantially correct.

Q. I say that is upon that assumption?

A. Yes.

Q. That they are substantially correct?

A. Yes, sir.

Q. And it is upon the further assumption, is it not, that the present operating expenses will be maintained?

A. Well, yes and no. That is the assumption, and still, if the operating expenses were decreased the same ruinous effect would result, but I don't know to what extent.

Q. Without regard to the amount which they would be decreased?

A. No, if they were decreased a certain amount. Mr. O'Brien, let me be clear on that myself. There is a fixed expense in railroading; then there is the expense that vibrates. Now, when you get that vibratory expense down anywhere near the fixed expense, you are getting on dangerous ground, so that the operating expenses might be decreased a certain amount if these rates were decreased, and still be getting down to that dangerous line. I think that would be the case with the Minneapolis & St. Louis for the reason that we have such a very thin gross earnings. Our gross earnings are now down close to that stationary point.

Q. Well, of course, you can always assume a series of reductions or tables which would result in bankruptcy; but you are not in charge of the operating department?

A. I am not in charge of the operating department, but I want to tell you that I have a great deal to do with it, more, perhaps, than any other traffic man has in the country because of the peculiarity of our traffic with relation to the operating expense; I think our general superintendent consults me constantly in regard to the relation between the traffic and the operat' ~ expenses.

Q. Have you anything to say to the fixing of salaries?

A. Only in my own department.

Q. Only of your subordinates?

A. Only of my subordinates.

Q. And there is, I presume, a staff that is ordinarily found in a railroad, a general manager and general superintendent?

A. There is the general staff of officers on our road the same as other roads.

Q. A man in charge of the operating department?

A. We have a man in charge of the operating department.

Q. And your position is that of traffic manager?

A. That is it.

Q. And you are also traffic manager of the Iowa Central?

A. Yes, sir.

Q. Which takes up some of your time?

A. Yes. However, the two roads work so closely as a unit, from their geographical location, that in acting for one I act simultaneously for the other.

Q. Well, your duties as traffic manager of those two roads occupy you pretty constantly, do they not?

A. Yes, they do; I admit that.

Q. So that you permit the officers of the operating department and the other departments to manage their departments?

A. Oh, I don't mean to say, Mr. O'Brien, that I exercise authority over them.

Q. You exercise no supervision over them?

A. No, but if the general superintendent was to come to me upon a question and ask me whether or not certain trains would be run to accommodate certain traffic, or certain things would be done to accommodate certain traffic and I said yes, it would be done, without regard to his judgment.

Q. Now, we ascertained yesterday that the coal which you received from the Illinois coal-fields netted the Minneapolis & St. Louis Company forty-one cents per ton?

A. From the Illinois coal-fields?

Q. Yes.

A. Yes. That is, they netted—I don't want to say that—don't let us have it stand that way because it doesn't net us that. That is what we would receive as our proportion.

Q. That was the revenue received?

A. Yes.

Q. It wasn't the net revenue, that is the gross revenue?

A. That is the gross revenue, yes.

Q. And you stated that that was not compensatory.

A. I do not regard it as compensatory.

Q. In order to be compensatory, you think the gross revenues should have been one dollar per ton?

A. Well, yes, I think one dollar per ton would have been compensatory.

Q. That would have been fairly compensatory?

A. I am not certain, because, as I have stated constantly, I cannot segregate one rate.

Q. Now, does that apply to hard coal as well as soft coal, —about those same figures?

A. Well, it would be much more compensatory on a dollar basis than it would on the forty-one cent basis if the forty-one cent is a loss.

Q. Well, I say does that testimony practically, substantially apply to hard coal?

A. Yes, it does, Mr. O'Brien.

Q. Now, I notice that the revenue derived by the Company from Minnesota interstate soft and hard coal, as shown by Exhibit 14, was $116,320.37. Take the second item in the first two divisions, soft coal, Minnesota interstate traffic, $96,593.62; hard coal, Minnesota interstate traffic, $19,726.75; it is the sum of those two items. The sum of the second items in the first column, soft and hard coal, is, I believe, $116,320.37. Now, that is only forty-one per cent. of a revenue which would be fairly compensatory?

A. Well, do you mean to ask me if forty-one cents is all that we received out of any of that coal business?

Q. That is what you have said.

Mr. BUTLER: No, that is Illinois coal, that was forty-one cents.

A. Forty-one cents out of Illinois coal destined to Minneapolis; but these figures include all of the interstate business on the Minneapolis & St. Louis road that would be affected by it.

Q. You said yesterday that there was no coal brought from

Iowa, that practically all of the coal included in these items came from the—

A. But I didn't say that there was no coal brought from Peoria and the Peoria district sent to other points on the Minneapolis & St. Louis road out of which we earned a revenue.

Q. Besides Minneapolis?

A. Besides Minneapolis. This does not relate alone to Minneapolis. If it did, on the basis of forty-one cents, we wouldn't have to wait,—there would be no question as to our being in bankruptcy; that forty-one cents we earn on the haul from Albert Lea to Minneapolis, Mr. O'Brien; but that affects through rates from Peoria, for instance, to other points in Minnesota out of which we may earn more money.

Q. Are you able to give a statement of whether or not that rate is compensatory according to the actual facts?

A. The forty-one cent rate?

Q. Yes.

A. I think it is not compensatory.

Q. Well, then, without regard to whether it is all hauled to Minneapolis or not, the proportion of the interstate rate which the Minneapolis & St. Louis Company actually receives upon hard and soft coal is not compensatory?

A. There are degrees of compensatoriness (if you will); for instance, the statutory rate may affect the rate from Peoria to some point in Iowa.

Q. Well, now, we are not talking of the statutory rate at all; we are talking of a condition of things when the statutory rate is not enforced and therefore cannot affect it. I am talking of the proportion of the interstate rate which you actually received during the period from July 1, 1905, to June 30, 1906.

A. I understand the question better now. The interstate division of the through rate is not all upon the proportion of forty-one cents from Albert Lea to Minneapolis, nor is it based in proportion to the forty-one cents. In many cases we get

a percentage of a higher rate, and these figures represent what our proportion of that lose would be, based upon the particular division covering the particular transaction, and they are not all based the same. Mr. O'Brien, if I know what you want I am going to give it to you if I can. Now, that forty-one cent. rate that we figured yesterday is the division of the Peoria rate when destined to Minneapolis. Now, suppose that shipment was going to Chaska,—

Q. I will come to that in a little while.

A. I want to be plain about it.

Q. Now, let us imagine that the shipment is going to Chaska. Is its character as an interstate shipment changed after it reaches Minneapolis?

Mr. BUTLER: It doesn't reach Minneapolis, does it, to go to Chaska?

WITNESS: Do you mean what is the difference between the character of an interstate shipment to Minneapolis and to Chaska?

Q. Yes.

A. Well, from our point of view, there is a great difference, because of the item of competition.

Q. Well, is this coal first hauled to Minneapolis?

A. No.

Q. And Chaska is on the line between Albert Lea and Minneapolis?

A. Yes.

Q. So that a carload of coal shipped to Chaska from Peoria would be cut out at Chaska and left there?

A. Yes.

Q. Now, what is the rate from Peoria to Chaska?

A. $1.40.

Q. And how much of that does the Minneapolis & St. Louis obtain?

A. Thirty per cent., straight.

Q. Thirty per cent. straight?

A. Forty-two cents per ton.

Q. And what is the distance from Albert Lea to Chaska?

A. It is eighty-five miles from Albert Lea to Chaska, and twenty-three miles from Minneapolis to Chaska or from Chaska to Minneapolis.

Q. Is that rate compensatory?

A. No, sir.

Q. How nearly compensatory is it?

A. I couldn't determine that, it would be impossible.

Q. Now, the rate allowed by Chapter 232 for hauling soft coal the distance from Chaska to Albert Lea is seventy-five cents per ton, is it not?

A. Yes.

Q. Almost double?

A. Yes.

Mr. BUTLER: Seventy-five cents for eighty-five miles.

Mr. O'BRIEN: Seventy-five cents for eighty-five miles.

WITNESS: As against forty-two cents for eighty-five miles.

Q. Now, let us get nearer to Albert Lea. What is the rate from Peoria to New Prague?

A. $1.40.

Q. And what proportion of that rate does the Minneapolis & St. Louis get?

A. Forty-two cents.

Mr. BUTLER: That is exactly the same basis as Chaska, isn't it?

WITNESS: Yes.

Q. So that the rate from Albert Lea to any point south of Minneapolis is $1.40, or, entirely to Minneapolis, is $1.40?

A. Yes.

Q. What is the rate to Albert Lea?

A. $1.40.

Q. And from there to Minneapolis the rate is the same?

A. Yes; the rate is $1.40 in Iowa, too.

Mr. BUTLER: How far down does that go into Iowa?

WITNESS: To about Marshalltown, I think.

Q. Anywhere above Marshalltown, Iowa?

A. I will state exactly in a minute. It goes as far south as Marsh, Iowa.

Mr. DURMENT: How many miles is that from Albert Lea?

WITNESS: No, it stops at Ollie, Iowa.

Mr. DURMENT: How far is that from Albert Lea?

WITNESS: Well, Mr. O'Brien, here is Richland, Iowa, right here, and Ollie is the first station west; Ollie would be right in there, 215 miles from Albert Lea.

Mr. BUTLER: Ollie is 215 miles from Albert Lea?

WITNESS: 215 miles from Albert Lea.

Mr. BUTLER: How far from Minneapolis?

Mr. O'BRIEN: That would be 323 or 321.

WITNESS: I call it 108 to Albert Lea.

Q. Then it would be 323?

A. 323.

Mr. BUTLER: Ollie is not on the Minneapolis & St. Louis, is it?

WITNESS: Ollie is a station on the Iowa Central railway, in the state of Iowa.

Q. How far is Chaska from St. Paul or from Minneapolis?

A. Twenty-three miles from Minneapolis.

Q. Now, the rate on coal from Peoria to Chaska is $1.40?

A. Yes, sir.

Q. And of that amount the Minneapolis & St. Louis Company receives forty-two cents?

A. Yes, sir.

Q. Now, will you please take Chapter 232 and compute the rate allowed by that chapter from Duluth to Chaska, considering it as one haul. That would be 173 miles, would it not?

A. Yes.

Q. It would be more than that; it would be at the rate of 180 miles, would it not?

Mr. BUTLER: That would be the Northern short-line road?

Mr. O'BRIEN: Yes. I think it is about 180 miles; 23 and 156.

WITNESS: That is pretty close, I guess; that is about the mileage. Soft coal would be $1.07 per ton.

Q. That would be on a through, joint rate, would it not?

A. That would be the distance-tariff rate for 107 miles on any joint rate that I could control.

Q. On a through joint rate?

Mr. BUTLER: On 180 miles you mean?

WITNESS: On 180 miles.

Q. That would be a through joint rate from Duluth to Chaska?

A. Well, I don't understand that the statutory rate provides for a through joint rate.

Q. Neither do we, but that is figuring it at the statutory rate on the assumption that there was a through joint rate.

Mr. BUTLER: Or that it came by the Milwaukee road, which would be one haul from Duluth to Chaska.

WITNESS: Yes, Mr. O'Brien, the rate would be $1.07 from Duluth to Chaska over the Milwaukee road.

Q. Has the Milwaukee railroad a line to Duluth?

A. It has a traffic arrangement which gives it the right to use the track as its own and it prints its own tariffs.

Q. It has a tariff arrangement, has it not, by which the Northern Pacific hauls coal for it at a certain rate?

A. I don't know about that, but in meeting their competition I regard the Milwaukee road as running directly into Duluth.

Q. Well, we had better find out. If you know that is the fact I would like to know it.

A. I do know this fact: That the Milwaukee road do pub-

lish rates from Duluth to Chaska as though they owned the road, and that is the only thing for me to know, as a traffic man, in meeting the competition.

Q. Don't you know, as a traffic man and as a man whose business it is to familiarize himself with the situation, that the Milwaukee road is enabled to do that because it has a contract with the Northern Pacific under which the Northern Pacific agrees to haul coal from Duluth to St. Paul and to deliver it to the Milwaukee road at forty cents per ton?

A. The internal, domestic relations of the Milwaukee and Northern Pacific is none of my concern.

Q. You don't know that that fact was developed during the investigation of these rates by the Railroad & Warehouse Commission?

A. I am informed that that fact was developed.

Q. And that the contract is on file in the office of the Railroad & Warehouse commissioners?

A. Well, I don't know that I read that. All the information I have is from the papers.

Q. But from the papers you understood that that fact was developed. Now, do you think, with your knowledge of that fact, that you are justified in assuming that the Milwaukee road has an independent track to Duluth and makes one haul of coal from Duluth to Chaska?

A. Why, that is the only thing I could consider, Mr. O'Brien. The question of the money earned between the two carriers would not concern me. I might think that the Milwaukee road got too much or too little, or the Northern Pacific got too much or too little, but my duties are to meet the competition of the through rate, and as soon as I determine that the Milwaukee road have the power to make a through rate, that settles it so far as I am concerned, my status is fixed.

Q. That is true, and the duty of the Railroad & Warehouse Commission is to ascertain whether as between you all and

your various arrangements and ramifications the public is getting fair competition?

A. Yes, I think that is true.

Q. Now, let us get at it from those two sides. The price of coal at Minneapolis and St. Paul is determined somewhat by its price at the Head of the Lakes with freight added, is it not?

A. I think so, yes, somewhat.

Q. The arbitrary rate charged to your Company by companies hauling coal from Duluth to the Twin Cities, is one dollar on soft coal?

A. Seventy-five cents on soft coal, one dollar on hard coal.

Q. Seventy-five cents on soft coal?

A. Yes, sir.

Q. The distance by the shortest line is 156 miles, is it not?

A. I believe that is so. I supposed it was 152.

Q. The rate allowed by Chapter 232 for a haul of 160 miles, which is the rate that it takes for soft coal, is ninety-eight cents, is it not?

A. For 160 miles ninety-eight cents, yes, sir.

Q. And for hard coal $1.22 per ton?

A. Yes, sir.

Q. The rate which would be allowed for the separate haul from Minneapolis to Chaska, twenty-three miles, taking the rate for twenty-five miles, would be fifty-four cents per ton for soft coal, and sixty-nine cents per ton for hard coal, would it not?

A. Yes, sir.

Q. Under the rate charged by the Milwaukee road you receive sixty-five cents a ton by meeting that competition? You receive sixty-five cents a ton, at the present time, for hauling soft coal from Minneapolis to Chaska, a distance of twenty-three miles?

A. I don't quite get your figures.

Q. Well, your rate to Chaska from Duluth is $1.40, is it not?

A. The rate on soft coal from Duluth to Chaska would be $1.40 a ton.

Q. Of which seventy-five cents is paid to the initial carrier?

A. Yes.

Q. Leaving sixty-five cents to the Minneapolis & St. Louis?

A. Yes.

Q. For a haul of twenty-three miles?

A. Yes.

Q. While on the interstate haul to that same point you receive forty-two cents for a haul of eighty-nine miles?

A. Eighty-five miles.

Q. Forty-two cents for a haul of eighty-five miles?

A. Yes.

Q. And if you received this coal from the shipper at Minneapolis and hauled it to Chaska, twenty-three miles, you would be entitled to a rate, under Chapter 232, of fifty-four cents?

A. Yes.

Q. And if you received it from the shipper at Albert Lea and hauled it to Minneapolis, a distance of eighty-five miles, you would be entitled to seventy-five cents?

A. Yes.

Q. If it was soft coal.

A. Remember, I am supposing this on the "if"; I say *if* that was all there was to the transaction, yes.

Q. Now, if the shipment from Duluth to Chaska was to be considered as one direct shipment for a distance of 185 miles, the rate upon soft coal allowed by Chapter 232 would be $1.09?

A. $1.07 we figure it to Chaska.

Mr. BUTLER: We figure it 180 miles.

WITNESS: 180 is the figure you gave me before.

Q. $1.07?

A. Yes, sir.

Mr. BUTLER: That is the new rate.

Q. And if you still paid the same arbitrary to the initial carrier, the amount received by the Minneapolis & St. Louis Company would be thirty-two cents for the haul of twenty-three miles?

A. Correct.

Q. Was that the basis upon which you estimated the loss which the Minneapolis & St. Louis would sustain in preparing Exhibit 14?

A. Well, that is the basis I would have used if the other factors had been consistent with it; but my tonnage that I figured on didn't come from Duluth and couldn't come from Duluth because my manufacturing establishments at Chaska can't use any coal that does come from Duluth; they can't make brick and sugar in competition with the factories south and west of us; they have to get the same kind of coal at the same price or a coal that will do the work. For instance, we get no coal from Duluth that they can burn brick with at Chaska that will sell the brick cheap enough to compete with firms farther south in Minnesota and in Iowa. Consequently they go into Iowa to get cheap coal, and that is what fixes my rate. If I could figure that way, I would make my rate $2 in Peoria and get compensation out of it, but I can't do it. I have to go without the tonnage if I advance my rate. This is the principle used, Mr. O'Brien, but it didn't fit the case that presented itself in these figures evolved as the result of the factors.

Q. You have estimated here that there would be a loss on intrastate traffic from the carriage of soft coal of $1,429.52?

A. That is true.

Q. In arriving at that loss, is the method just explained the method adopted by you?

Mr. BUTLER: In cases where the tonnage existed.

Mr. O'BRIEN: There must have been tonnage or there couldn't have been a loss on interstate traffic.

Mr. BUTLER: I gather from him that he says there was no—

Q. You have given a loss on intrastate traffic on soft coal?

A. Yes, sir.

Q. That is from Duluth, isn't it?

A. Yes. Well, Mr. O'Brien, I would allow the other line the seventy-five-cent or the dollar rate. There is no question about that.

Mr. DURMENT: Seventy-five cents on soft coal and one dollar on hard?

WITNESS: Seventy-five cents on soft coal and one dollar on hard. Now, if the rate was $1.07, we would allow the road the arbitrary and take the balance and the difference would be the loss figured on actual tonnage that moved.

Q. But none of that went to Chaska?

A. Some of it may have gone to Chaska, but not—The large coal business in Chaska is not the carload of hard coal or so that goes in for domestic purposes, but it is the continual flow of coal, three to six cars, maybe ten cars a day, or fifteen cars a day that go to two industries there, the brick plant and the sugar plant.

Q. Now, Mr. Tittemore, what difference does that make? You have given me $1429.52 loss which you would have sustained upon intrastate traffic in soft coal, and I am asking you how you arrive at it, and you commence telling me that the amount of coal sent to Chaska is very small in comparison. I don't care whether it is small or big, I am talking of the $1429.52 which you say you would have lost.

A. Well, I would have lost that on other stations besides Chaska, and that in itself alone is not a large loss.

Q. I am not asking you whether it is a large loss or not, I am asking you your method of computation in arriving at it.

It was large enough for you to include in that exhibit, wasn't it?

A. Oh, yes.

Q. Then can't you tell us how you included it, what your method was in arriving at it?

A. I thought I had.

Q. That is all I am asking you; I am not asking its relative proportion with regard to your revenues or your losses.

A. All right.

Mr. DURMENT: Well, he hasn't answered the question.

Q. Now, if a portion of the loss which you computed would have occurred upon shipments of coal from Duluth to Chaska, did you arrive at that loss by computing the same in the manner in which I have described?

A. Yes.

Q. And wherever that loss occurred at any of your stations, that was the method adopted?

A. Well, not wherever any loss occurred, but wherever any loss occurred in coal from Duluth—

Q. Yes.

A. —or intrastate business, we figured on the basis of allowing the line their present arbitraries.

Q. Have you a rate upon coal from Minneapolis to points upon the line of your road?

A. Yes, we have. Yes, our rate on coal from Minneapolis to stations in Minnesota would be Class D rate, as I remember it. As I remember the classification of coal in the state of Minnesota it is Class D, Mr. O'Brien, and Class D rates would apply from Minneapolis to points on the Minneapolis & St. Louis road in Minnesota.

Mr. STAPLES: I think it is "E".

WITNESS: Well, I am not certain. We haven't your classification here.

Mr. STAPLES: The Western Classification is what you want.

WITNESS: Your present rules and regulations in the state of Minnesota are, Class D rates will apply on certain articles, and among those it names also hard and soft coal, coke, salt, etc.

Q. What is the rate upon soft coal from Minneapolis to Chaska?

A. Four cents per hundred pounds, or eighty cents per net ton. It is Class D, four cents per hundred pounds, which makes it eighty cents per net ton.

Q. That is, a ton of 2,000 pounds?

A. Yes, sir, Mr. O'Brien.

Q. You are not giving the rate established by the State of Minnesota, you are giving the rate established by the Railroad Company?

A. From where?

Q. Under the Western Classification from Minneapolis to Chaska.

A. Well, I am giving the rate that the Commissioners prescribed. That is not the rate they ordered, that is not the statutory rate, I am not giving that; I am giving the rate that is actually in force.

Q. You knew the order of September 6th did not include a rate upon coal, didn't you?

A. No, but their rate was, just the same, a class-rate then as it is now.

Q. They fixed the rate for the different classes, but these commodities that were included in Chapter 232 were exempted from that?

A. Yes, but you ask for the present rate, Mr. O'Brien.

Q. Now, Mr. Tittemore, is soft coal or hard coal included in the Western Classification?

A. The index to the Western Classification says, "See page 48 item 24." I turn to page 48, and item 24 says, "Coal and lignite, see tariff." In other words, it is not classified in the classification. If I was the agent at Minneapolis, I would not

be satisfied with that, but would go to look for "fuel."

Q. Well, we are satisfied with it.

A. All right, then, but there is considerable said about hard and soft coal under the head of "fuel," but if I was the agent at Minneapolis I would then turn to my tariff, which is a local tariff on all freight between stations in Minnesota; I would look through it and could not find coal. I would have consulted my classification and tariff and could not find coal; and I would immediately go to my rules or commodity rates; I could find no coal in the commodity rates. I look for my rules; I find under Rules and Regulation No. 3 that "Class D rates will apply on cement, lime, plaster, etc., and also hard and soft coal, coke, etc."; and I turn to Class D and find that the rate on coal from Minneapolis, between Minneapolis and Chaska, is four cents per hundred pounds or eighty cents per ton of two thousand pounds.

The MASTER: What rules do you refer to?

WITNESS: The rules that are printed in the local tariff on all freight fixed by the Minneapolis & St. Louis Railroad and filed with the Railroad & Warehouse Commission of the state of Minnesota.

Q. Then coal is not included in the Western Classification?

A. No.

Q. But the Minneapolis and St. Louis Railroad Company has adopted a tariff for the carriage of coal at the rates prescribed for the articles included in Class D on the Western Classification?

A. Well, it has made Class D rates apply to certain commodities like coal.

Q. It has adopted as its tariff for coal the prices fixed by the Railroad & Warehouse Commission for Class D?

A. Yes.

The MASTER: What is Class D, if I may ask, generally?

Mr. O'BRIEN: Well, now, the witness can answer better than I can.

Q. Please describe generally the articles included in Class D.

A. Well, I can begin at this classification and name some of them for you; for instance, the first thing I see here is kindling fibre. The next thing is fuel blocks and fuel brick; the next thing I see is peat. Heavy articles and cheap articles usually are put in Class D.

The MASTER: That is what I wanted to know, in a general way.

Mr. BUTLER: That includes stone and brick?

WITNESS: Possibly stone and brick would go one class lower, which is "E," but it is articles analogous to those; the heavy cheap article gets in Class D or E, the aim being usually in our classification meetings to get the cheapest and the articles used most generally into the D or E class.

Q. The Western Classification, however, does not classify hard or soft coal?

A. No.

Q. And the placing of it in this classification is a matter for the convenience of the Company and is the act of the Company itself, entirely?

A. That is, in the tariff?

Q. Yes.

A. Yes, for the Company and for the public too.

Q. Yes. You don't claim, however, that the order of September 6th fixed the price of carrying coal?

A. I don't think it did, but I couldn't tell without I read the order. I don't think it did; I have in mind that it didn't.

Q. Well, I think we all can agree on that. What is the rate maintained upon soft coal from Peoria to Fairfax?

A. The rate on soft coal from Peoria to Fairfax, Mr. O'Brien, would be $1.80 per ton of two thousand pounds.

Q. And what amount of that is received by the Minneapolis & St. Louis?

A. One-half of the rate, or ninety cents, from Albert Lea to Fairfax.

Q. The distance is two hundred miles?

A. The exact distance, according to our distance table, would be 178 miles from Albert Lea to Fairfax. We go by Hopkins, you know. Fairfax coal would not be hauled into Minneapolis.

Q. So you save a little?

A. Our western division starts from Hopkins, Minnesota, so we save some haul and terminal.

Q. 178 miles?

A. Yes.

Q. Is that rate compensatory?

A. I do not regard it so.

Q. What is the rate from Duluth to Fairfax?

A. The rate on soft coal from Duluth to Fairfax would be $1.80.

Q. Of which the Minneapolis & St. Louis would retain $1.05?

A. Correct.

Q. And the haul from Duluth is ninety-three miles?

Mr. BUTLER: The Minneapolis & St. Louis haul.

Q. The Minneapolis & St. Louis haul is ninety-three miles?

A. Yes.

Q. For which they receive $1.05?

A. Yes.

Q. In the Peoria haul the haul is 178 miles, for which they receive ninety cents?

A. Yes.

Q. Under the provisions of Chapter 232 for a haul of 178 miles, which takes the price of 180 miles, the amount allowed is $1.07?

A. Yes.

Q. And for the haul of ninety-three miles the amount allowed would be eighty cents, taking the price for ninety-five miles?

Mr. BUTLER: That would increase the rate?

WITNESS: Yes, the statutory rate would—

Q. For ninety-three miles would be eighty cents a ton for soft coal?

A. And for 180 miles would yield $1.07 per ton.

Mr. BUTLER: Where do you get the 180 miles?

Mr. O'BRIEN: That is got from Albert Lea to Fairfax.

Q. What is the rate upon soft coal from Peoria to Madison?

A. The rate on soft coal from Peoria, Illinois, to Madison, Minnesota, is $1.95 per net ton.

Q. Of which the Minneapolis & St. Louis retains—

A. Of which the Minneapolis & St. Louis retains one-half for its haul from Albert Lea to Madison.

Q. 97½ cents?

A. 97½ cents.

Q. The distance hauled from Albert Lea to Madison is what?

A. 261 miles.

Q. Now, the rate from Duluth to Madison is what?

A. The rate from Duluth to Madison, on soft coal, is $1.95 per net ton.

Q. Of which the Minneapolis & St. Louis retains $1.20?

A. Yes.

Q. And the distance hauled is 177 miles?

A. Our distance is 170 miles from Minneapolis to Madison.

Q. The distance of the Minneapolis & St. Louis haul, for which it receives the 97 cents, is 170 miles?

A. The 97½ cents, yes.

Q. The length of the haul by the Minneapolis & St. Louis road on a shipment of soft coal from Duluth to Madison, for which the Minneapolis & St. Louis receives $1.20, is 170 miles?

A. That is correct, yes; I had the other example in my mind.

Q. And the haul upon the initial line is about 156 miles?

A. Yes.

Q. Making a total haul in the state of Minnesota of 326 miles?

A. Yes.

Q. Now, the rate allowed by Chapter 232 for a carriage of soft coal 326 miles would be $1.59, would it not?

A. I think that is true. Our greatest distance published is 300 miles, so I would have to see that table.

Q. And for a haul of 170 miles would be $1.01?

A. Yes; that is under the statutory rate.

Q. And for the distance hauled by you on an interstate shipment from Peoria, which would take the rate for 290 miles, the compensation allowed would be $1.49?

A. Yes.

Q. The rate to Fairfax was $1.80?

A. From Duluth and Peoria?

Q. From Duluth and Peoria, was it not?

A. Yes.

Q. And Fairfax is distant from Minneapolis ninety-three miles?

A. Yes.

Q. The rate to Madison is $1.95?

A. From both Duluth and Peoria, yes.

Q. That is distant 170 miles from Minneapolis?

A. Yes.

Q. So that for the additional haul of about 80 miles the rate is increased ten cents per ton?

A. Fifteen cents per ton; the difference between $1.80 and $1.95.

Q. Now, by Chapter 232 the rate for a haul of the first 95 miles is 80 cents per ton, is it not?

A. Yes.

Q. And the rate for 170 miles is $1.01 per ton?

A. Yes.

Q. An additional allowance for similar lengths of 21 cents per ton?

A. Yes.

Q. So that the ratio of increase for those distances provided by Chapter 232 is larger than the ratio of increase established by yourself?

A. Yes.

Q. Now, the amount of coal transported upon the Minneapolis & St. Louis which comes from the Head of the Lakes is quite insignificant as compared with the amount which comes from the Illinois coal-fields?

A. That is my judgment of the thing.

Q. But the price of the transportation from the Head of the Lakes fixes the price of transportation from the Illinois coal-fields?

A. It is a factor in it, yes.

Q. The rate received by the Minneapolis & St. Louis road upon shipments from Duluth of coal is much more nearly compensatory than the rate received by it on the Illinois coal?

A. The rate in itself would appear to be so.

Q. And your facilities are complete for receiving coal from the Head of the Lakes?

A. Yes.

Q. Peculiarly so, are they not?

A. No, because our terminals in Minneapolis are glutted pretty much of the time, and we prefer to get our coal from some point that will take it out of there.

Q. Isn't it true that your terminals and the Northern Pacific terminals connect at Minneapolis?

A. Oh, we can receive coal.

Q. Isn't it true that your terminals connect at Minneapolis?

A. Yes, we have connecting tracks; if we didn't, we could connect with some one else.

Q. And so for many years there was a joint-traffic agreement between the Minneapolis & St. Louis and the old St. Paul & Duluth, wasn't there?

A. Yes; there is now—the same that there is now.

Q. And entire trainloads of coal were received from the St. Paul & Duluth by the Minneapolis & St. Louis and transported over its territory?

A. Not in Minnesota.

Mr. DURMENT: Could be.

WITNESS: Well, you could do it if it was wanted.

Q. You received entire trainloads?

A. No, we did not, I don't think, Mr. O'Brien; I can't imagine any such condition.

Mr. DURMENT: But your facilities were such that you could do it?

WITNESS: Yes.

Mr. DURMENT: But it wasn't offered?

WITNESS: It wasn't offered.

Q. And the Minneapolis & St. Louis has a subsidiary company known as the Transfer Company of Minneapolis?

A. Well, I know that only as a matter of knowledge; I am not an official of that company.

Q. But you know that there is such a subsidiary company?

A. That there is such a company, yes.

Q. Consequently your facilities for receiving coal from the roads running to Duluth are excellent, are they not?

A. Why, they are the ordinary facilities, which I think are ample for any business that would offer.

Q. And the supply of coal at the Head of the Lakes is ample, is it not?

A. Not of the qualities used by our industries.

Q. And the compensation that you receive from the transportation of that coal is greater, if shipped from Duluth, than if it is shipped from Peoria.

A. If we could get the coal and it was to our advantage to get it from there.

Q. Is the coal from the Illinois fields a cheaper coal than the soft coal received at the Head of the Lakes?

A. That is such a broad question and involves so much—

Q. I am speaking of its price. Does it sell for a lower price per ton?

A. Our people can't buy at Duluth the same grade they can buy in Illinois, consequently the price is different.

Q. Is there a difference in the cash price between the Illinois coal and the soft coal shipped from Duluth, for instance, at Chaska or at Fairfax or at Madison?

A. Why, I can't answer the question for the reason that the same grades of coal can't be purchased in Illinois that are purchased at the Head of the Lakes.

Mr. BUTLER: Well, the price per ton, without regard to the quality.

WITNESS: I can't assume that there is the same price when there is not the same commodity. I can assume anything, but the coal isn't there; I don't know that.

Mr. DURMENT: Does the coal from the Illinois field, of the quality it is, sell for more or less per ton than the coal at the Head of the Lakes, whatever quality it sells for?

WITNESS: I can't answer that question, because the price at the Head of the Lakes varies so and is manipulated so much; I don't know.

Q. Do you know what price is obtained in Fairfax for the Illinois coal?

A. I do not know at the moment, but I can always find out and use that in determining my rate to a certain extent.

Q. Do you know the price that is paid by those industries for that coal?

A. I do not now. I did then. That is, I have at different times known.

Q. The coal is delivered on cars at Fairfax, I presume?

A. Not always; more than likely bought f. o. b. Peoria.

Q. Do you know what the price is at Peoria of that coal, f. o. b.?

A. I could know but I do not at the moment. The price varies, changes.

Q. Will you ascertain?

A. I will ascertain. It will be a difficult work.

Q. Give us the prices of that coal at the times between July 1, 1905, and June 30, 1906.

A. I will undertake to get those prices for you.

Q. Now, we might as well understand ourselves about this. Do you say that the reason your shipments of coal from Peoria are so large as compared with your shipments of coal from Duluth is because, notwithstanding the fact that the compensation to the Minneapolis & St. Louis upon shipments from Duluth would be greater than it is upon shipments from Peoria, your road, for the purpose of giving cheaper coal to the industries situated upon your line, voluntarily bears that loss?

A. Well, I don't mean to say that because the $1.40 rate might not be fixed by us but in competition with some one else, but I do say that what we aim to do is to bring our coal from the coal-fields that will provide it the cheapest of the quality that the industry wants, and that has much to do with the determination of the rates. But from Duluth there are other factors why we don't want the coal to go on to our railroad; we don't want the Great Northern and the Northern Pacific cars to come on to our railroad and be returned to Minneapolis empty and not enable us to load them with wheat

or flour or corn and give us a long haul off that road again to Peoria.

Q. Is this a matter over which you have any control?

A. If I don't control that on our railroad, then I don't control anything.

Q. Then this is a matter that is controlled by you, is it?

A. And competition. I am a factor in it. That is, my judgment is used.

Q. You know, of course, that you can refuse to receive this coal from the Illinois Central at that rate, if you so desire?

A. I think I could, Mr. O'Brien, if—

Q. You know that, as a matter of law, you could do so, don't you? That is your right?

A. Well, I am not versed in the law, but I would say that I could do it. I think we have the right to refuse to join in a rate, but if we did we would ruin ourselves.

Q. You have sworn here that this rate is not compensatory.

A. I do say that it is not compensatory, in my judgment.

Q. You must concede that the rate which you obtained from shipments from Duluth is more nearly compensatory. Now, you know that, as a matter of law, you cannot be compelled to transport coal at a rate which is not compensatory, don't you?

A. I wish the law could fix my rates.

Q. Will you answer my question?

A. I can't do it, Mr. O'Brien.

Q. Don't you know, as a matter of law, that you cannot be compelled to transport either state or interstate freight at a rate which is not compensatory?

A. That had never come to my mind in the fixing of the rates, but, of course, I know, as a matter of right, we would have to do it.

Q. Isn't that your understanding of the law?

A. No, I don't understand that the law gives me any right

to refuse to take coal off from the Illinois Central road. I might have a federal court demand that I take the coal for other reasons than besides it was not compensatory to our railroad.

Q. You don't understand, then, that you have any right to insist upon a rate which shall be compensatory to you before accepting coal?

A. I don't believe that I have any right, as a traffic man, or that our Railroad Company has, to underhandedly say to our industries on our road that we won't give them the best rates and the best prices that we can get for them to keep their industries alive and to permit them to do business that will create a business and that will yield the Railroad Company a return.

Q. Will you answer my question now?

A. That is a direct answer to it.

Q. It isn't your understanding, then, that you are not compelled to accept freight at a rate which is not compensatory?

A. There are so many other conditions fixing the rate, the compensatoriness—the degree of compensatoriness.

Q. Will you answer my question?

A. I can't, Mr. O'Brien, as you ask it.

Q. You can't say, then, whether your understanding is that you are not compelled to receive freight at a rate which is non-compensatory?

A. I don't think that any court, perhaps, would let me determine, in my judgment, as I have stated there, the compensatoriness of a rate, but perhaps I would have to prove that. Now, I have simply given that as my judgment.

Q. Your judgment is, then, that you are compelled to receive freight at a rate which is non-compensatory where no order has been made by any tribunal to that effect, by any commission or by any court, but it is simply a question of a traffic arrangement between yourself and another carrier?

A. And the interests of my Railroad Company generally.

Q. You understand the difference between compelled by circumstances and compelled by law, do you not?

A. I think I do, but—

Q. Now, I am speaking of legal compulsion.

A. I don't know what you mean by it; that is, so far as related to this case; if I did, I would answer you candidly.

Q. Leaving out of consideration the advantage to be obtained by the industries situated upon your road from cheap fuel, leaving out of consideration the advantage which your road may obtain by reason of increased traffic, leaving out all considerations of policy which may induce you to adopt a certain course, I ask you do you understand that you are compelled to accept commodities for transportation over your road at a rate which is non-compensatory?

A. I think I would be compelled to do it on such a commodity as coal, because I think that I am obliged as a railroad company to provide fuel for the territory traversed by our lines. I think I am compelled to do that.

Q. Leaving out of consideration the obligation to furnish fuel to the people along the line, do you understand that you are compelled, as a matter of law, to accept a commodity at a rate which is non-compensatory?

A. I can't quite get at what you are driving at.

Q. It isn't necessary that you should, if you will answer my question.

A. Well, what I mean is—I didn't mean it as I said it, Mr. O'Brien, I didn't mean that; I meant that I can't. You see, coal doesn't stand on its own bottom. I will say this: That I believe that if there was just the coal rate alone in itself and there was a rate proposed which would yield a non-compensatory division to the Minneapolis & St. Louis Railroad, I believe that I could refuse to accept that coal for transportation over our road if there was a loss, the loss having been proven.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. In preparing Ex. 14 did you proceed upon the theory that you had no right to refuse coal coming over the Illinois Central when the rate to be allowed to the Minneapolis & St. Louis Railroad Company would not pay the cost of the service?

A. I did not take that into consideration.

Q. Well, did you assume that you had no right to refuse coal at a rate which would not pay the cost of that service?

A. I did not assume that. I could not decline to take the traffic from the Illinois Central Railroad, or the Iowa Central Railroad, on any grounds at all without ruining my property that I represent.

Q. You did, then, assume that it would be necessary in all cases for you to meet the Duluth rate?

A. I assumed that in all cases it would be necessary for the through line to meet the Duluth rate in order to keep in competition and prevent discrimination.

Q. Well, you assumed that it would be necessary for the Minneapolis & St. Louis, in connection with the Illinois Central, to meet the Duluth rate?

A. Yes, I did.

Q. Entirely regardless as to whether or not that rate would be sufficient to pay for the cost of the service?

A. Well, the railroad company's traffic manager must look out for his basic tonnage on a railroad; he has got to have some tonnage in order to do business, and I had that in my mind.

Q. Well, you can answer my question without arguing as to whether your conclusions were correct or not.

A. I don't want to argue the question.

Q. I am simply asking you the fact.

A. Well, I can't answer the question unless it is put to me in the way in which I can answer it.

Q. Well, did you or did you not take into consideration the

question as to whether the assumed rate would pay the cost of the service?

A. I did not.

Q. But you did assume that it would be necessary to meet the Duluth rate?

A. No more than I did the Manitowoc and the La Salle and the Chicago and the Streater and the Farmington and the Burlington line.

Q. You did assume that it would be necessary for you to meet the Duluth rate, did you not?

A. I knew or assumed that the Duluth rate would fix all of the other rates and proceeded upon that basis.

Q. And that it would fix your rate, also?

A. Yes.

Q. Or, in other words, it would be necessary for you to meet it?

A. Yes.

Q. And you assumed that you would haul an equal amount of coal at such reduced rate?

A. I don't quite understand the question, Mr. O'Brien, I guess.

Q. Well, the table is based upon the theory that you would have hauled that same amount of coal, but at the reduced rate, if it had been in force?

A. Yes, the tonnage had actually been hauled during a certain period of time and we figured the reduced rates as applicable to that tonnage and it made that loss—this loss.

Q. And that in every case the entire reduction will be borne by the Minneapolis & St. Louis road?

A. No, not in every case, Mr. O'Brien.

Q. Well, in what cases?

Mr. BUTLER: He testified to a number of those yesterday.

A. I think the testimony showed yesterday, but I will have to figure another case.

Q. Well, did you testify to that yesterday? I don't remember.

A. Yes, I did, and I don't remember just what example I used, but these figures in Ex. 14–Scott are, many of them, not based upon Minneapolis at all, nor the division that would accrue on business destined to Minneapolis. For instance, as in the case of Lake Mills, Iowa, or some point west on the Minneapolis & St. Louis.

Q. From how many different coal-fields is this coal produced which we have been speaking of as received by you from the Illinois Central?

A. Well, we open up our road to all coal-fields, so far as possible, especially the southern fields because of the quality of the coal and its adaptability to manufactures.

Q. Can you say from how many coal-fields this coal was produced?

A. It would be pretty hard; I would have to go over the entire coal-field in the Southeast. Of course, we don't invite the coal on our road on a proportion that is less than the $1.40 rate from Peoria.

Q. Can you name the kinds of coal?

A. Why, it all comes under the name of bituminous coal, no matter what field it is from and no matter what the exact quality may be from any field.

Q. Well, has any of it a distinctive name, such as Briar Hill?

A. Oh, there might be Big Muddy and Briar Hill and Third Vein La Salle and Farmington Lump and Walnut Hill Block and Walnut Block, but I have no such names in my mind.

Q. Do you know whether it is so known or not?

A. I presume it is, by the trade. So far as I am concerned, I take it from the station and then we group sometimes our other stations around that one and call it a "field." We might

call it the Springfield district, for instance—the Bloomington district, the Peoria district.

Q. Have you a record of what particular fields this coal comes from?

A. I haven't with me, but could, after a little time, get that up.

Q. Will you prepare such a statement as to the tonnage?

A. I will undertake to prepare such a statement.

Q. Is this same coal received at Duluth from boats?

A. No.

Q. Is it received at Milwaukee?

A. Some of it is, but not of the same character of coal, no.

Q. I mean from the same fields.

A. No.

Q. Is it received at Gladstone?

A. No.

Q. Or at any of the lake points?

A. I think not.

Q. Is any of it shipped into Minnesota by any of your competitors?

A. Oh, yes.

Q. For instance, which competitor?

A. Well, I should say that the Milwaukee, Great Western and Northwestern and Burlington; all roads with which we compete have access to the same fields or similar fields.

Q. Well, do those roads actually ship any of this same coal to Minnesota?

A. They do wherever their lines come into Minnesota.

Q. Well, the Milwaukee lines come into Minnesota.

A. Yes, and for instance, if it had an entrance into one of these fields in Illinois, would transport coal into a competing point with us in Minnesota.

Q. Has it such an entrance?

A. It has.

Q. And does it bring coal by rail from the coal-fields to Minnesota?

A. I have no doubt it does.

Q. Well, do you know whether it does or not?

A. Well, I never saw a car and I never saw a way-bill, but I imagine it does. I am told it does, and, of course, I have reason to believe—sensible reason to believe it does.

Q. What coal-field has the Milwaukee road access to?

A. Well, I think the Milwaukee road would have access to—in the first place, it has access to a field that it creates itself in Illinois; I think it owns a field down in the La Salle district. I do not believe that the Milwaukee company gets from that district more coal than it uses for itself unless perhaps the grades of steam-coal that may be shipped into Minnesota, possibly; then, I presume that it has traffic relations with the Chicago & Alton road that would handle coal up through some junction in Illinois into Minnesota in the Springfield district, and I presume that it too has connections with the Illinois Central road that would enable it to haul coal up through some interior junction into Minnesota from the Carterville district or from the "Big Muddy district," I think they call it. I think that it has those traffic relations that would enable it to do that but while I cannot testify as to the Milwaukee road I will say that they are so jealous of their coal traffic as not to join in some of those arrangements that other roads do. They can do it and do do it in certain instances.

Q. You are unable to give the names of the mines from which this coal is produced?

A. I couldn't state from memory, no; I would have to look it up.

Q. Are any of those mines owned by the Minneapolis & St. Louis Railroad Company?

A. No.

Q. Are any of them owned by the Illinois Central Railroad Company?

A. I think that the Illinois Central do own mines in Illinois, but whether they have ever shipped any coal into Minnesota or not is a question; I think not. But mines alongside of the mines owned by the Illinois Central road in Illinois I have no doubt have shipped coal into Minnesota.

Q. Do you know whether the Illinois Central is a stock holder in the Minneapolis & St. Louis Railroad Company or not?

A. Of course I have no knowledge of that, but I do not believe it is. I have seen a list of the stockholders at different times, and I never saw the Illinois Central's name among them. In fact, I was a teller once, I think, in an annual meeting, held a year ago, and no Illinois Central votes were offered.

Q. And you don't know how the market price of the coal received over the Illinois Central at points along the line of the Minneapolis & St. Louis road compares with the price of bituminous coal received from Duluth?

A. It is difficult for me to know that or to even approximate it, because the manufacturer on our road, say of flour, comes to me and says, "Mr. Tittemore, I am about ready to buy my coal at Farmington, Illinois, from the Maplewood Coal Company; I want to sign a two-years' contract. The relation of the rates now is satisfactory. Do you contemplate advancing those rates?" and I then proceed to do the best I can to secure the business, to secure it so that the Minneapolis & St. Louis road and the Iowa Central will get a haul, and I don't know—I ask him his price sometimes, but it usually is a special price fixed by contract and would have more to do in the determination of the rates fixed into our territory, Mr. O'Brien, than the day-by-day shipments that are made to points in Minnesota from any other point, say Duluth or anywhere else.

Q. Are you able to say anything as to the difference in the

quality of the bituminous coal received at Duluth?

A. I have always supposed that the quality of the bituminous coal at Duluth was very much better, making it so high-priced that our manufacturers along our line cannot purchase it and do business as against the same manufacturing establishments in other states who buy this cheaper coal from the Illinois fields.

Q. Then you do know that there is a difference in the price?

A. I didn't say that I knew. I said I am told that there is, and it is reasonable for me to suppose that there is.

Q. But you don't know whether there is or not?

A. I couldn't tell that there was a difference, Mr. O'Brien, say of 25 cents in the price, but I do know that the better article usually takes the higher price, and whenever we have asked for prices from Duluth we have always found the price prohibitory when it comes to serve an industry on our road in competition with other roads leading from Duluth and who have also a line into the Illinois fields.

Q. The third item in Ex. 14 in each division of that exhibit refers to interstate commerce which does not touch Minnesota?

A. Yes, sir.

Q. At what point in Iowa do you consider that the enforcement of the rates prescribed by Chapter 232 would compel a reduction in interstate rates where the commerce does not touch Minnesota?

Mr. BUTLER: Is that limited to coal?

Mr. O'BRIEN: I suppose we had better confine that to coal first, yes.

A. Then I haven't only a case that I can suppose in mind. When that question was asked last night and we were closing, I said I would look that up and I got my example on coarse grain. I could have taken it—

Mr. BUTLER: Maybe that would be satisfactory.

WITNESS: I can take it on coal, but I would have to have

time, because what I supposed was wanted was an exact example of how it worked, and I took my example from the statements upon which this Ex. 14 is predicated.

Q. Well, you had better give us that exact example, if you have got one.

A. I am going to use this map, if you will permit me, Mr. O'Brien.

Mr. BUTLER: What is that map?

WITNESS: This is a Western Trunk Line committee map. Now, we will take for an example (here is our road here) Lake Mills, Iowa. That is one of the first items which appears in the computations that make up Mr. Scott's Ex. 14, I find. The old rate (distance-tariff rate) from Albert Lea to Minneapolis was nine cents or is nine cents per hundred pounds. The new rate would be seven cents per hundred pounds. The old rate from Albert Lea to Chicago and Peoria would be 14½ cents per hundred pounds. The new rate from Albert Lea, based upon the 2-cent reduction to Minneapolis, would be 12½ cents per hundred pounds from Albert Lea to Chicago and to Peoria. Now, the question is, would that reduce the rate from Lake Mills, Iowa, on the Minneapolis and St. Louis road, hauling it around and down through the Iowa junctions and out to Chicago and Peoria, would that leave the rate at Lake Mills 14½ cents per hundred pounds? I claim that there would be a reduction in the rate from Lake Mills of 2 cents per hundred pounds, and our proportion of that would have reduced the revenue to the M. & St. L. road .8 of a cent per hundred pounds on 671,000 pounds of coarse grain, such as corn, oats, barley, etc. Now, the question is, why could we not hold a two-cent higher rate from Lake Mills to Chicago and Peoria and New York and Liverpool, and all over the world, if you will, why could we not hold a two-cent higher rate from Lake Mills than we do from Albert Lea. In the first place, I believe we are compelled under the law not to discriminate against the man at

Lake Mills and that we must give him as reasonable a rate as from Albert Lea, particularly when we desire to hold the traffic to Lake Mills and when we had just as long a haul too from Lake Mills; or, rather, in that case, haul it from Lake Mills. We do not want to dry up our Lake Mills station and send all of our business to Albert Lea. Two cents per hundred pounds on a bushel of corn or oats or barley is a considerable fraction of a cent a bushel or a full cent a bushel, as in corn; and we would be discriminating against the man at Lake Mills. We regard it as illegal under the fourth section to hold a higher rate from Lake Mills than would obtain from Albert Lea, because the conditions there wouldn't warrant it, there is no extraordinary competitive conditions that would warrant our discriminating against the Lake Mills man. And, besides, it would be impossible, from a railroad point of view, to hold a higher rate, a rate two cents higher from Lake Mills to Chicago and Peoria and Liverpool and New York and Boston, than from Albert Lea and get any business at Lake Mills. Now, Albert Lea, you see, is peculiarly located on our road. It is the southern end of a division; and if this business from Lake Mills goes to Albert Lea, the Minneapolis & St. Louis Railroad loses all of the business to Chicago and to Peoria, because we can't compete very well out of Albert Lea for that territory. We prefer, therefore, to have the business kept at our local points south of Albert Lea. There are good reasons, from a railroad point of view, why we should reduce the rate from there in order to protect and hold any traffic at all if it were not from the public-policy standpoint as well. When we came to reduce these rates and make up that exhibit, we called several shippers into our office (I can't give their names now, but I will have a list of their names made) and they protested and declared that we could not hold higher rates from their points, and if we did undertake it they would take their cases to the Interstate Commerce Commission. I didn't make those computations without

consulting the shippers interested, that is, the representative shippers interested, such as at Montgomery, New Prague, Waseca, New Ulm and other points. Now, let us take another case that is more important to us.

Q. Wait a minute. Let us take one at a time.

A. Did you want to go further on that?

Q. Yes; I want to take one point at a time while we remember it.

A. All right.

Q. What is the rate upon coarse grain from Albert Lea to Chicago at present?

A. 14½ cents.

Q. And what is the rate from Albert Lea to Minneapolis?

A. 9 cents is the rate.

Q. And what is the rate from Minneapolis to Chicago?

A. Do you mean the local rate from Minneapolis to Chicago?

Q. Yes.

A. The rate is 12½ cents.

Q. Is the rate for hauling coarse grain from Minneapolis to Chicago over your line and the Illinois Central 12½ cents?

A. Yes; that is coarse grain.

Q. 12½ cents?

A. Yes.

Q. And what proportion of that belongs to the Illinois Central?

A. Well, out of Minneapolis there is a terminal deduction. After deducting $3 per car as an arbitrary, which is allowed to the Minneapolis & St. Louis road, the Minneapolis & St. Louis road would get 22 per cent of the remainder. The balance would be the Illinois Central's.

Q. Now, can't you get that?

Mr. BUTLER: Is that a mileage basis?

WITNESS: Well, it is not a mileage basis, although it would

be pretty close to a mileage basis in that instance. It is not exactly mileage, but close to mileage.

Q. Can't you give us those amounts?

A. I wish to correct myself: The Illinois Central divisions are $3 per car arbitrary to the M. & St. L., and 23 per cent, not 22. In the case of the Iowa Central the Minneapolis & St. Louis would be 22 per cent. Mr. O'Brien, our local rate on coarse grain from Minneapolis to Chicago is 12½ cents and our proportional rate from Minneapolis to Chicago is 7½ cents per hundred pounds.

Q. The rate on coarse grain, then, is very much higher from Minneapolis to Chicago than it is on wheat?

A. But it is never used, it is the 7½ cent proportional rate that is used, because Minneapolis does not, of itself, produce any grain. It is put in there, as a matter of fact, to protect intermediate territory south of Minneapolis who are not entitled to the same rate as Minneapolis would be, because the grain that comes into Minneapolis has already paid a tribute for the haul in there and is in competition with the through haul, while there is no grain grown at Minneapolis. From south of Minneapolis it would be entirely wrong and discriminatory to give to these grain people a 7½ cent rate when they contributed nothing towards a haul into Minneapolis, and for that reason we put in a rate of 12½ cents from Minneapolis to Chicago, so that the rate from these intermediate points will not be reduced to the proportional basis. The proportional rate, or the rate out of Minneapolis that really hauls coarse grain business, is 7½ cents per hundred pounds, out of which the Minneapolis & St. Louis road would get for hauling a 25-ton car from Minneapolis to Albert Lea, $10.93 including the arbitrary allowance for terminals.

Q. How much will that be per hundred?

A. Well, that would be,—a 25-ton car which is 50,000 pounds, which is a very fair average, (well, your terminal

would be about three-fourths of a cent), it would be about 2½ cents per hundred pounds including the terminal.

Q. 2½ cents per hundred pounds?

A. Yes.

Q. Now, any coarse grain that originated west of Minneapolis would be charged the local rate to Minneapolis and 7½ cents for being carried to Chicago?

A. Yes.

Q. And of that 7½ cents the Minneapolis would receive 2½ cents for hauling it to Albert Lea?

A. Yes.

Q. Well, didn't you say yesterday that the Minneapolis & St. Louis got no part of this interstate charge between Chicago and Minneapolis on wheat? Wasn't that what you corrected yourself about yesterday?

A. I didn't understand the question, Mr. O'Brien.

Q. Well, wouldn't the same be true in the case of wheat or flax originating west of Minneapolis destined for Chicago?

A. No, the Illinois Central takes the full 7½ cents on wheat.

Q. The Illinois Central takes the full 7½ cents on wheat?

A. Yes.

Q. But they do not upon coarse grains?

A. No; you are talking about the proportional rate. The wheat rate from Minneapolis to Chicago is ten cents per hundred pounds.

Q. Well, that is another of those imaginary rates?

A. No, it is not an imaginary rate, but—

Q. Well, it is a paper rate.

A. It is practically a paper rate, I will admit that. I don't think it is a rate upon which anything moves.

Q. I am speaking of the proportional rate now.

A. Yes, I think that is the rate that is used—

Q. You get no part of the proportional rate on wheat or flax?

A. We get the Minneapolis rate up to Albert Lea on wheat. We give the Illinois Central 7½ cents from Albert Lea to Chicago, to haul the stuff to Chicago. That might not be true with the Iowa Central to Peoria because I can arbitrate that and be fairer towards the Minneapolis & St. Louis road, if I want to be, and I think I am, but haven't the divisions before me.

Q. That is, if you can come to an agreement with yourself as traffic manager of the Iowa Central and traffic manager of the Minneapolis & St. Louis?

A. That is exactly it. If I can be fair and honest to the two, I think the Minneapolis & St. Louis road is entitled to more than the Illinois Central gives it, and I think from an Iowa Central standpoint I allow the Minneapolis & St. Louis more than its competitors allow them.

Q. You are just as fair and just as intelligent and just as competent when you are acting as traffic manager of the Iowa Central, are you not, as in your present capacity?

A. Well, I try to be fair and try to be intelligent. It is hard work sometimes.

Q. Now, the rate from this point in Iowa that you mentioned, to Chicago, is fourteen cents?

A. 14½ cents.

Q. What was the name of that point?

A. Lake Mills, Iowa.

Q. Lake Mills, Iowa, is how far from Chicago?

A. The short mileage is by the Northwestern road, and I haven't their mileage table, but I should think it was as far as from Albert Lea, which is about 420 miles, I think; about 420 miles from Lake Mills to Chicago.

Q. How far is Lake Mills from Albert Lea?

A. Nineteen miles.

Q. What is the rate from Lake Mills to Albert Lea?

A. The local rate?

Q. Yes.

A. We don't happen to have an Iowa distance-tariff with us.

Q. Can you not approximate that?

A. I should say it would be about four cents per hundred pounds. That is an interstate rate, and it would be about five cents per hundred pounds. I was thinking about Albert Lea.

Q. And what is the local rate from Albert Lea to Chicago?

A. Fourteen and a half cents per hundred pounds from Albert Lea to Chicago on coarse grains, corn, oats, barley, etc.

Q. Now, you say that there is a necessary reduction there in order to prevent discriminating against Lake Mills in Iowa.

A. That is the way I figure it.

Q. It is in favor of Albert Lea?

A. The rate would be in favor of Albert Lea, yes, if the reduction were made.

Q. The present rate from Lake Mills is 14½ cents?

A. Yes, sir.

Q. And the present rate from Albert Lea to Chicago is what?

A. 14½ cents.

Q. Now, the rate on coarse grain from Albert Lea to Minneapolis, as provided by Chapter 232, would be 7 cents, would it not?

A. Yes, sir.

Q. And the rate from Minneapolis to Chicago is 7½ cents, is it not?

A. The proportional rate.

Q. That is the lowest rate, 7½ cents?

A. That is the lowest rate, 7½ cents, which is a proportional of a through rate.

Q. Those two rates together amount to 14½, do they not?

A. That is the way I think they would figure it.

Q. Now, by what method could the rates provided in Chapter 232 be taken advantage of by a shipper at Albert Lea so as to secure a lower rate to Chicago than 14½ cents?

A. There is no 7½ cent rate out of Albert Lea.

Q. But he could ship his wheat to Minneapolis, could he not, for 7 cents, if the commodity rates were in force?

A. Coarse grain?

Q. His coarse grain.

A. The proportional rate would not apply on business coming from that section. The proportional rate would apply on business coming from the northwest and west.

Mr. BUTLER: It does not apply on business coming from the south and southerly points?

WITNESS: No. Mr. O'Brien, I want to be candid about that proportional rate. It is a proportion of a through rate. It is a division of a through rate, and is used for billing purposes. It is not a basing rate for the assembling of traffic. The price would not be based upon it, in other words.

Q. Is it not true, Mr. Tittemore, that all of the wheat that is shipped from Minneapolis to Chicago is shipped at a rate of 7½ cents per hundred pounds?

A. I couldn't say that all of the wheat would be shipped at 7½ cents per hundred pounds, but all of the wheat from our territory west of Minneapolis, the rates are based upon that.

Q. Well, is it not a fact that all of the wheat that is shipped from Minneapolis to Chicago is shipped at that rate?

A. I believe the larger proportion is.

Q. Have you in mind a single instance, since what you call the proportional rate has been in force, in which a higher rate has been charged?

A. I don't really see how there could be a higher rate charged, because there is no wheat grown in Minneapolis.

Q. There is no wheat grown in Minneapolis, but so far as

the carriage of that wheat from Minneapolis to Chicago, an immense amount of wheat originates for the purposes of transportation in Minneapolis, does it not?

A. Well, competition has fixed the freight rates via Minneapolis.

Q. I am not talking about what is done. There is an immense amount of wheat that is received in Minneapolis by a carrier for transportation to Chicago which is an original shipment, is there not?

A. Original with the road who originates it?

Q. Original with the road taking it to Chicago. Original as to it, rather; taken from the elevators in Minneapolis, is it not?

A. Yes, but I don't want to answer that question until I know what you mean by original.

Q. Well, is there not an immense amount of wheat stored in the elevators at Minneapolis during the year?

A. There is.

Q. And is not an immense quantity of that wheat reshipped by original billing from those elevators to Chicago?

A. Not on original billing, but it would be on these proportional rates; the originating point being shown upon the shipping bill, then the billing clerk would bill at the rate of 7½ cents, because our tariff says distinctly that the 7½ cent rate would apply upon wheat originating in a certain territory. If that were not true, a through rate could not be computed and we would be very soon in conflict with the federal law.

Q. There is an immense amount of wheat received in the elevator at Minneapolis during the year, is there not, stored there?

A. There is.

Q. And sold while in the elevators?

A. I presume that is true.

Q. And subsequently shipped by the purchaser to Chicago?

A. I presume that is true.

Q. The shipment from exterior points to the elevators at Minneapolis has been accounted for and settled by the persons responsible for it in numberless instances, at least?

A. No doubt of that.

Q. And the shipment from Minneapolis to Chicago is accounted for and settled by the persons responsible for that to the railroad?

A. Yes, but I never knew of a shipment—

Q. Now, wait a moment. Isn't that true?

A. Well, that is true as far as it goes.

Q. So that, so far as the wheat is concerned, so far as the identity of the owners is concerned, so far as the responsibility for the freight charges are concerned, the shipment from Minneapolis to Chicago is an absolutely independent and isolated transaction?

A. No.

Q. Now, why is it not?

A. The shipper and the railroad are compelled to know, under the federal law ,where that wheat or grain originates, and whether it is entitled to the 7½ cent rate; and the shipper must know that before he buys the wheat; he must know whether he is entitled to a 7½ cent rate under the law, or the local ten-cent rate, and 2½ cents per hundred pounds would bring him to his senses very quick, and he will buy the wheat based upon the 7½ cents, and to protect himself as against the law he will make the elevator from whom he purchases and the railroad over which the freight came convince him of the fact that it is entitled to the lower rate; otherwise he would be receiving a rebate of 2½ cents per hundred pounds.

Q. You think that is a business transaction?

A. Well, I think it is a necessary business transaction.

Q. Now, that wheat, in the instance I speak of, an immense amount, hundreds of thousands of bushels of wheat, are re-

ceived from exterior points and stored in the elevators at Minneapolis?

A. Yes.

Q. And while there sold?

A. Yes.

Q. The local rate to Minneapolis has been paid the carrier?

A. Yes.

Q. The purchaser of that wheat then proposes to ship it to Chicago?

A. Yes.

Q. And at the time of making that shipment he notes, or has noted by the carrier, upon the way-bill the point where that wheat originated and the cost of bringing that wheat to Minneapolis?

A. Well, not only that, but he must present an expense-bill covering the shipment into Minneapolis and the publication of the railroad company as to the rights that that shipment has under its tariff and under the law as explained, and he must comply with that or the railroad company will not ship it out at the 7½ cent rate.

Q. That is, he presents to the Chicago line a statement of the expense of the original owner in transporting that wheat to Minneapolis?

A. Yes. Now, Mr. O'Brien, may I make another illustration which I think will clear it up a little?

Q. I think we better go on. And thereupon he obtains from the Chicago line a rate of 7½ cents to Chicago?

A. Why, if it is a through shipment he has a right to ship it the balance of the way from Minneapolis to Chicago for 7½ cents. It would be just exactly like your bringing in an expense-bill to me as a railroad man, and I would say that you could change that billing to the Chicago rate and ship it through on the original billing, for which the railroad company from Minneapolis to Chicago would receive 7½ cents per hundred

pounds; but because of the necessity of holding this grain at Minneapolis, because of the necessity of holding this grain at Minneapolis for a certain length of time, we permit them to do that, pay the freight up to Minneapolis, for instance, and if they ship that forward within a certain time as per our tariffs, we give them the advantage of the through rate that would apply to Chicago, and bill it out at the balance of the rate that they have not paid. Now, that can be done by the new purchaser or by the old owner, or in any way, shape or manner that they may agree among themselves, so long as the integrity of the through rate is preserved to Chicago.

Q. And upon presenting the evidence to the Chicago carrier that the wheat originated outside of Minneapolis, and was shipped to Minneapolis, he obtains a rate of 7½ cents to Chicago?

A. Yes; but if it is a transit arrangement, it is handled differently again; the full Chicago rate is collected at Minneapolis, and the tonnage shipped out free.

Q. It is somewhat similar to what you have described as milling-in-transit, is it not?

A. That is about it, Mr. O'Brien. It all works out in about that way.

Q. The wheat is brought to Minneapolis upon the local rate, stored in elevators, sold, and shipped to Chicago for 7½ cents more?

A. Well, that is the basis upon which the through rate would be made, that is true.

Q. And for the purpose of obtaining that rate and varying that rate, you consider the shipment a through shipment—

A. Yes.

Q. —from the point where it was received by the railroad company, to Minneapolis, and thence to Chicago?

A. Yes; that is the way the tariff reads. It reads, a proportion of a through rate of 7½ cents,—a proportional tariff.

The MASTER: The difference between that and the milling-in-transit is the fact that the milling is left out?

WITNESS: Yes.

The MASTER: And the tariff is paid, when the wheat is milled in transit, in the first instance, clear through?

WITNESS: Yes; and we credit them with so much tonnage just as though it was so much cash.

The MASTER: Anybody that ships the wheat into Minneapolis and stores it in an elevator and pays the freight to Minneapolis, without any regard to whether it is going beyond or going into the mills or sold out there, if he sees fit to ship it to Chicago he can do it on the through rate?

A. On the 7½ cent rate. That tariff reads as a proportion of a through rate.

By Mr. DURMENT:

Q. Then, as I understand it now, owners of grain or shippers of grain from points in Minnesota can ship their grain over your line or the other lines on a bill-of-lading to a commission house in Minneapolis—

A. Don't say "commission."

Q. Well, I don't care. —to a dealer, then, to somebody at Minneapolis—

A. Say an elevator or mill.

Q. Well, and it may be sold there to some other party, and by that other party stored, and subsequently, if the other party wants to ship it to Chicago he can ship it at 7½ cents?

A. Well, he can do that if the through rate from the point in Minnesota to Chicago—the integrity of that rate—is not destroyed by the transaction, and if the proportional tariff of the 7½ cents distinctively refers to the territory from which the shipment might come to Minneapolis.

Q. Well, then, this is it: In all of the territory tributary to Minneapolis, where the through rate is made up of the local rate to Minneapolis, plus the arbitrary of 7½, a man may ship

from that territory into Minneapolis, consign it to Minneapolis, pay the local rate, sell it there, let it be stored there, and it can afterwards be shipped to Chicago by the purchaser for the 7½ arbitrary rate?

A. If that were not true how could the Wisconsin Central road get any traffic, or any other road get any?

Q. I don't know, I am asking whether that is not the rule.

A. I can't answer that. That proportional rate is a proportion of a through rate and no man has any right to misuse it, and I don't mean to say that any railroad or any man is misusing it, or any elevator or any dealer, but the 7½ cent rate was first put in there to enable the Wisconsin Central road or the Burlington road or some other road, to get some proportion of the Northwest grain that they could not get of themselves because their road didn't extend into that territory, and that was the amount of money that was left that they could get, in competition.

Q. I am not charging anybody with doing what is not right, and I am not going into the reason for it; I want to know if I can get the fact. Now, as I understand the fact, it is this: That there is a certain territory in which the through rate to Chicago is made by taking the local to Minneapolis and adding the arbitrary of 7½ to it; is that right? That was your testimony yesterday, as I understand it.

A. Well, this proportional tariff rate has staggered everyone that has ever had anything to do with it, and I can't explain it, I don't believe, and I prefer not to try it any further.

Q. I know, but we want you to.

A. I don't believe I can.

Q. My recollection is that you said yesterday to us that your interstate rate (that is, your state rate to Chicago) I mean the interstate rate to Chicago from certain portions of your territory, is made up by taking the local to Minneapolis and adding

to it the arbitrary of 7½, and that would give you the interstate rate on wheat.

A. No, I didn't say that. I said our rates were made up with relation to Minneapolis and were based upon 7½ cents above the rate to Minneapolis, but this proportional rate of 7½ cents does not apply to business coming off from our road, because we cannot make the through rate. It applies on business from the Northern Pacific and Great Northern and other lines that will not publish through rates to Chicago themselves, and we have to publish a proportional rate in order to get a proportion of their traffic.

Q. As I understood you yesterday, the interstate rate was made—if you wanted to get the interstate rate you took the local, and it was the local plus the arbitrary of 7½ from Minneapolis to Chicago—

A. No.

Q. —that would give you the through rate.

A. I said that all of our rates were based upon 7½ cents above the rate to Minneapolis, or else, as in the case of New Ulm, or where we come in competition with a—

Q. Yes.

A. But that is not a proportional rate, that 7½ cents.

Q. I don't care anything about the proportional now.

A. Well, but understand, Mr. Durment, it is not a separate publication; it is just the basis of the rate. The rate appears to be say 16 cents; the 7½ cents does not show in the tariff at all in this case.

Q. That is all right; I don't care whether it shows in the tariff or not. Didn't you say to us yesterday that taking the various points of shipment from which it was shipped over your road (wheat) that you arrived at the figure in your tariff through to Chicago by taking the local into Minneapolis and adding 7½ arbitrary to it?

A. That is the practical effect, but I didn't say that in that

way. I said if I made an arrangment with a milling industry on our road in Minnesota that I based that—promised him a rate that would not be higher than 7½ cents above the rate to Minneapolis.

Q. Isn't it a fact from points on your road that you make your through rate to Chicago from those various points by taking the local from the points into Minneapolis and adding 7½ to it?

A. I never made my rates that way. I believe that we mean the same, but I don't think you ask the question—

Q. Well, that is the result, isn't it, that you will find if you take your rates through to Chicago from points on your road (your through rates) that you will get your local rate by subtracting 7½ from the through rate?

A. Usually that will be true because that is the basis on which they are made, but that is not the consideration that makes them.

Q. Here is the question that is sticking in my mind that isn't answered: Isn't it true that in the territory served by your road where your through rate from a point on your road to Chicago would be the local plus 7½ arbitrary—

Mr. BUTLER: You mean the local to Minneapolis?

Q. The local to Minneapolis, plus 7½ arbitrary would be the through rate; they could ship their grain into Minneapolis on the local rate without saying anything about shipping it farther, and sell it there on the market to somebody else, and that somebody else (if he saw fit) afterwards could ship it out at 7½ to Chicago?

A. They couldn't do it on our road.

Q. What would they have to pay on your road if they shipped it to Chicago from Minneapolis, then?

A. They would pay the balance of the through rate; it might be 7½ cents, but it would not be under this proportional tariff.

Q. I don't care about that, but they would pay what would be 7½, wouldn't they?

A. Yes, but they couldn't bring a bill-of-lading in to me or get me to change the billing, because I wouldnt' let them do it. We don't publish any such tariff upon our road; they can't do it; they can't divide their transaction on our road as they could in the other case, Mr. Durment. I see what you mean now. They can't divide that transaction.

Q. Do you ship any grain over your road from Minneapolis which your road has not before that brought into Minneapolis?

A. Oh, I think we do. We make the 7½ cent proportional rate the same as other roads.

Q. Just the same?

A. Applicable from a certain northwest territory, yes, just the same.

Q. Then any wheat in Minneapolis that they can show was raised in a certain territory will get a rate from your road from Minneapolis to Chicago of 7½?

A. I think it would. Can I consult to see if I haven't got the tariff here? I really believe if we had a milling-in-transit tariff here (which is one of the most complex things in the world) that I could answer the questions, but I haven't the whole milling-in-transit in my head, the details of it.

Q. Well, suppose that somebody came to you in Minneapolis with a shipment of wheat for Chicago and showed you that that wheat was raised in a certain territory to which this proportional rate applies, that is all you would ask, isn't it? You would ship it then through for 7½, wouldn't you?

A. Well, I would take the rule, look at the rule, and if I saw—

Q. What is the rule? that is what I want to know.

A. Well, the rule would probably be that if that shipment was reforwarded from Minneapolis to Chicago within a certain time, certain proof being given me, as the agent of the road,

that the grain absolutely came from that point (they had to give written evidence by the expense-bill, showing the freight paid into Minneapolis, so that I could convince myself that the integrity of the through rate from the originating point to Chicago was not reduced) then they would have the advantage of the 7½ cent rate. But, further, it might be that the 7½ cent proportional rate would apply on all grain coming off from the Great Northern road in the state of Minnesota or Dakota. I don't say that it does, but we will assume that it does. Then all I would have to do would be to be certain that the grain did come off from the Great Northern railroad, and that the freight had been paid up to—In other words, I would have to know that it was not a local shipment from Minneapolis that might have come in off the Soo Line from Wisconsin at a much lower rate. I would have to have it from specified territory; if the Soo Line was specified from Wisconsin I could haul the business at 7½ cents to Chicago, but those tariffs must be filed with the Interstate Commerce Commission and they must be very specific as to territory, and the rule.

Q. How long a time is grain allowed to remain in Minneapolis before it can be reshipped on that?

A. I do not remember now and I want to tell you.

Q. Six months or a year.

A. I couldn't tell you. I know at one time that it was too long and we didn't join in any such length of time, and because I am ignorant on that subject I don't want to answer the question.

Q. How long was it when it was too long?

A. I think that six months is too long.

Q. Was it longer than that then?

A. I don't know; it was too long, in my judgment, because I do believe that it gave an opportunity for work that was not permissible under the law, and I think it was corrected.

Q. Have you ever known, in the past year and a half, grain

to be shipped out over your road, or any other road from Minneapolis to Chicago, that paid (I mean wheat) more than 7½ cents?

A. I couldn't remember, because, of course, I don't bill the wheat. I make the tariffs and I suppose that our agents bill out their freight absolutely in line with those tariffs. If they do not, our auditor would correct them and charge the difference to them. The application of a tariff, the legality of it, of course, must be detected by the auditor who sees the billing. I don't see that. The auditor is obliged to know that the agent has billed his freight in accordance with my instructions or the tariff instructions filed with the Interstate Commerce Commission.

Q. This is true, is it not, that it is not necessary for the same person who instituted the shipment to start with, to ask to have it reshipped in order to get the benefit of the 7½ cents from Minneapolis to Chicago? It is not required, in order to get the advantage of the 7½ cent rate from Minneapolis to Chicago, that the man who ships in to Minneapolis shall also reship from Minneapolis?

A. No, he might not. It might not, of necessity, be the same shipper.

Q. It may have been sold a half a dozen times between?

A. Yes, but—

Q. Well, now, that is enough now. We will have another feature of it.

A. If I leave that there I am leaving the thing in a—

Q. That is all I want now.

Mr. BUTLER: Well, better let him clear it up.

Mr. DURMENT: A little later.

WITNESS: I don't want to forget it, because I haven't stated the exact fact.

Mr. DURMENT: Better make a note of it, then.

Q. Now, another question: Neither is it necessary, is it, in

order that the shipper may get the benefit of the 7½ cents from Minneapolis to Chicago upon reshipment, that he should state, when he first makes his shipment, that it will eventually go through to Chicago?

A. No, because it might be sold in Minneapolis.

Q. Yes. In other words, a man may bill his wheat from a point in western Minnesota to Minneapolis, take a bill-of-lading for its delivery in Minneapolis by the railroad to the consignee, without indicating any desire or intention to ship it farther, and yet later the man who buys that wheat from him may have it shipped to Chicago for 7½ by showing of course, that it came from the proper territory and that the full proportion of the rate had been paid?

A. I think that is true.

By Mr. O'BRIEN:

Q. Now, will you take Chapter 232, the schedule containing that chapter, and show me how, by the enforcement of that rate, a shipper of wheat at Albert Lea can secure a lower rate to Chicago than 14½ cents?

A. No, I can't show that.

Q. If that is true, the enforcement of this schedule cannot introduce an unfair discrimination against Lake Mills, in Iowa?

A. Well, I don't think, then, I get your idea at all, because the combination of rates don't make the through rate. I have no combination to make a through rate on.

Q. Well, now, of itself Chapter 232, Laws of 1907, fixes no rate upon wheat from Albert Lea to Chicago, because that is an interstate shipment; isn't that true?

A. That is true.

Q. It only attempts to fix the price to be charged upon wheat for shipment between stations in the state of Minnesota; isn't that true?

A. Yes.

Q. If that rate was enforced, a shipper in Albert Lea could compel the Minneapolis & St. Louis road to transport coarse grain to Minneapolis at the rate provided in this schedule?

A. 7 cents per hundred pounds.

Q. I am saying they could do it at the rate provided in this schedule; is that true?

A. I want to be sure that is the statutory schedule; is that the one you mean?

Q. I said at the schedule provided in that statute.

A. Yes, 7 cents would be the rate.

Q. And that rate is 7 cents?

A. Yes.

Q. Assuming that that shipper got the proportional rate from Minneapolis to Chicago, he would be getting the benefit not only of the schedule provided in Chapter 232, but the very lowest rate under any circumstances between Minneapolis and Chicago, would he not?

A. Well, the 7½ cent rate don't apply on grain from that territory, and didn't when I made these figures, and never has.

Q. Assuming that he received the benefit of the proportional rate from Minneapolis to Chicago that you have described of 7½ cents, he would be getting the very lowest rate between Minneapolis and Chicago in existence, would he not?

A. Well, if I assume that the rate was 7½ cents, yes, he would be getting the 14½ cent rate.

Q. Is that the proportional rate?

A. Not on that business. I said business to the Northwest from off the northern line.

Q. 7½ cents is the lowest proportional rate, is it not, on any business from Minneapolis to Chicago?

A. It is the lowest rate there is, yes.

Q. The lowest rate there is on any coarse grain?

A. Yes. As a matter of fact, at this time he could get his 14½ cent rate through by that combination.

Q. From Albert Lea?

A. Yes. I think I will have to explain now this tariff, because I think it will change my other testimony. I don't remember just what I testified to, but I find that our 7½ cent rate on coarse grain now reads as a terminal rate and not a proportional rate, that is, at present; that is the way it reads. We protested against putting in the rate, but the Rock Island put in a terminal rate of 7½ cents, and we have met it.

The MASTER: Well, then, anyone can get that rate that deals in grain at Minneapolis?

WITNESS: It is a terminal rate now, and anyone can use the 7½ cent rate on coarse grain, ten cents on wheat.

By Mr. BUTLER:

Q. 7½ cents is the terminal rate from Minneapolis to Chicago on coarse grain?

A. On coarse grain.

Q. Including barley and corn?

A. Yes.

Q. And 10 cents on wheat?

A. Yes.

Q. What was the date of that tariff?

A. I haven't the date, but the tariff is G. F. O. No. 150-B.

Mr. DURMENT: When was the terminal for wheat made 10 cents?

WITNESS: I can't give you the date.

Mr. BUTLER: At the morning session we will bring in all of the tariffs.

WITNESS: I think that the tariff is necessary now to this case before we should proceed with it, so far as I am concerned. I am not well enough posted on it.

By Mr. O'BRIEN:

Q. You don't want to go on and illustrate this case?

A. I am perfectly willing to but can do it better with the tariffs because I find now that there is a difference in the rela-

tion of these rates to our local through rates from the points south of Minneapolis, and I think I had better be clear on that and not be assuming too much.

Adjourned until the morning of Wednesday, August 12th.

FEDERAL BUILDING, St. Paul, Minn., August 12, 1908, the hearing was resumed at 10 A. M.

JAMES N. TITTEMORE

recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. In your testimony yesterday you stated that the proportional rate on wheat between Minneapolis and Chicago was 7½ cents; is that correct?

A. Well, what I want to get clear on, am I testifying as to the time that these figures were made up?

Q. Yes.

A. There was a joint proportional tariff at that time on flax-seed, grain screenings, flour and mill-stuffs, as specified on tariff I have in my hands, M. & St. L. G. F. O. 3290, from St. Paul, Minneapolis and Minnesota Transfer, "applying only" it says, "on shipments originating beyond when destined to Chicago, Peoria, Pekin, East St. Louis, Illinois."

Q. What was that rate?

A. The rate in that tariff on wheat, for instance?

Mr. DURMENT: Give all. You spoke of wheat and flax.

WITNESS: Well, the proportional rate on wheat was ten cents per hundred pounds to Chicago and Peoria.

Q. And on coarse grains?

Mr. DURMENT: Well, let us have flax and the other things.

WITNESS: Well, flax-seed, flax-seed screenings, grain except wheat and grain screenings; to Chicago, 7½ cents per hundred

pounds; Peoria, 7½ cents per hundred pounds. That would include coarse grains.

Mr. BUTLER: Will you give me that number?

WITNESS: That is M. & St. L., G. F. O., No. 3290, Interstate Commerce Commission No. 1435, effective April 27, 1905.

Q. Has that been modified?

A. I find that M. & St. L., G. F. O., No. 150-A is a freight tariff on flax-seed, grain screenings, flour and mill-stuffs, as specified on page 2 of the same tariff, between St. Paul, Minneapolis, Minnesota Transfer and Chicago, Peoria, East St. Louis, etc., and is effective March 2, 1907. The Interstate Commerce number of that tariff is 1801, and the rates shown in the tariff are, south-bound to Chicago, flax and millet seed, 7½ cents, wheat 10 cents, flour and mill-stuffs 12½ cents, with an indication mark to a note which says, "Rate of 10 cents per hundred pounds will apply on flour, mill-stuffs and other wheat products manufactured from wheat originating north and west of Minneapolis, St. Paul or Minnesota Transfer, Minnesota." My interpretation of that is that the rate of 12½ cents is a local rate applicable upon flour and mill-stuffs from St. Paul, Minneapolis and Minnesota Transfer to Chicago. The rate on barley, corn, oats and rye, south-bound from St. Paul, Minneapolis and Minnesota Transfer to Chicago, is 7½ cents per hundred pounds. Likewise, grain and flax-seed, screenings, 7½ cents per hundred pounds. To Peoria,—Do you want the north-bound rates?

Q. I don't think we need them at this time.

A. Those are the south-bound rates. Now, to Peoria south-bound: From St. Paul, Minneapolis and Minnesota Transfer to Peoria, flax and millet seed, 7½ cents per hundred pounds; wheat, 10 cents per hundred pounds; flour and mill-stuffs, 12½ cents per hundred pounds, with the same indication mark referring to the same note that I have previously read from the tariff as applicable to Chicago traffic, which gives me the un-

derstanding that the 12½ cent rate on flour and mill-stuffs is a local rate. The rate on barley, corn, oats and rye, and then on grain and flax-seed screenings, is 7½ cents per hundred pounds. Below those rates, in a note in heavier type than the balance of the tariff is printed in, is the following: "Above rates are terminal rates and will not apply as maxima at intermediate points except that north-bound rates from St. Louis, Missouri, will apply as maxima from intermediate points on the Wabash railroad." Your question, Mr. O'Brien, was as to whether tariff 3290, Interstate Commerce Commission No. 1435, effective April 27, 1905, had been modified. In effect I should say not, although in the wording of the tariff it would appear to have been, but I think the effective working of the two tariffs is largely the same. It would be a long story to tell it to you (but it will come out as you ask me the questions, I have no doubt) as to what I mean by saying that I don't think there is a great modification by the actual application of the tariff.

Q. You mean the practical effect—

A. The practical effect.

Q. —of the two tariffs has been the same.

A. I think so, largely the same.

Q. The revenue derived by railroads for the carriage of these commodities from St. Paul and Minneapolis to Chicago has been the same under each tariff?

A. Very nearly the same.

Q. But there is a difference in the phraseology of the tariffs?

A. Yes.

Q. And the tariffs which had been made proportional rates under the first order have been made terminal rates under the second order?

A. Yes, and it is a fact that that has largely grown out of the definition that the Interstate Commerce Commission gives

us as to what proportional and terminal rates are.

Q. Now, you used those terms yesterday, and I wanted to ask you to explain what you meant by a proportional tariff and a terminal tariff.

A. Well, a joint proportional tariff, under my understanding, would be the balance of a rate, a part of a through rate. Now, a terminal rate might be that and *is*, under the sense of the word in which we use it in these tariffs, for the reason that, as I get the rulings and advice of the Interstate Commerce Commission, they expect us to use the word "terminal" merely to indicate that it does not apply from any points intermediate and we must call it a terminal tariff; there must be no ambiguity of language, if you will, and it must be certain that it is a terminal tariff applicable from a point to a point.

By Mr. DURMENT:

Q. Isn't there this difference between terminal and proportional: The proportional rate is the balance of a through rate from a certain point and certain intermediate points to the end of the through journey? That is to say, you make a rate from West to Chicago, the proportional is the balance of that through-rate left after the grain has been hauled to Minneapolis and the freight there deducted from the through rate?

A. It doesn't work out that way, Mr. Durment, although that was in the theory of the rate.

Q. Well, that is what it means, isn't it?

A. No, I wouldn't say that, because the proportional rate first grew out of the fact of railroads controlling a large amount of traffic in the Northwest or in the West, having rails to Chicago, could so fix their tariffs to Minneapolis and Chicago as to prevent a small line (not originating any of that traffic) competing for the haul from Minneapolis to Chicago, so that they would put in a proportional rate that would let a shipper from off a western or northern line bring grain in to the terminal, and then they would take it out at the balance—

Q. Of the through gate?

A. Well, the balance of a rate. That might not be the exact through rate, but it would be a proportional rate sufficiently low to force a certain amount of traffic over their road if the shipper was willing to give it to them.

Q. Yes, but it was always made upon the theory that the rate was from the point of origination through to Chicago say, the destination?

A. The theory was that the through rate would not be destroyed, of course, and still, if the traffic man wanted to put up an honest job (in his own mind) he could manipulate that thing and get traffic.

Q. And they did, but then that is not what I am interested in; what I want to know is just what you mean. Now, yesterday and day before, the term proportional rate apparently was used with this meaning, that shipments originating west of Minneapolis could be carried to Minneapolis and a part of the freight paid at Minneapolis; it could then be carried from Minneapolis through to Chicago, the carriage from Minneapolis to Chicago being a certain proportion of the entire rate which had been fixed as chargeable in every instance.

A. I am correcting that now, because I am referring, as I understand it, only to the tariffs that were in effect—

Q. No, I am asking you now as to what the terminal proposition is.

A. But, Mr. Durment, now I can't answer your question the way you put it. I want to do it and will do it if you will let me.

Q. Well, you can say yes or no.

A. No, I can't.

Mr. BUTLER: Mr. Durment, I don't think that you want to examine on those lines in such a matter.

Mr. DURMENT: Now, Mr. Butler, I think I ought, and it is my privilege to do so.

WITNESS: There was a different meaning, Mr. Durment, to the proportional tariffs prior to this April 27, 1905.

Q. Yes, I know that; that is what I am getting at, the meaning of the term prior to that.

A. The Omaha road and the Wisconsin Central road, if you remember, as well as our own, were indicted, and, of course, naturally grew to know more about the word "proportional" as the court determined what it meant for us, and we are gradually coming to know more about what a proportional tariff is.

Q. Now, what I want to know is this: Leaving out of consideration entirely this order of 1907 that you have read—

A. 1906.

Q. 1907, this last one.

A. Oh, yes.

Q. Leaving that out of consideration entirely and taking the term "proportional rate" as we have used it with reference to traffic during the year 1906 and prior to that time, I want to know just what you mean by "proportional rate."

A. Well, I am going to try and tell you from this tariff. This tariff reads (that is, this G. F. O. No. 3290), "Joint proportional tariff." It is joint with nothing, as a matter of fact. It don't mean anything so far as that word "joint" is concerned, because it is not a part of anything, therefore it is not a joint rate. I find, right over on the back part of that tariff, "Above rates are terminal rates and will not apply from and to intermediate points." I find another place where it says that "this joint proportional tariff applies only on shipments originating beyond St. Paul, Minneapolis and Minnesota Transfer to Chicago, Peoria, Pekin," etc. Now, I would understand under that "joint proportional tariff" reading "applicable only on shipments originating beyond" that you could take freight from any road West that originated west or beyond Minneapolis (I don't care for the exact direction, I think there is a

latitude there,) and that you could bill it to Chicago at these rates named therein, which act, if you will, as a joint proportion of a rate on business from beyond Minneapolis; at the same time, our terminal rates do not apply from any stations south of Minneapolis to Chicago or Peoria. Now, that is my understanding of the tariff.

Q. See if I have got it. Then the rates fixed in this were the rates at which you could take freight from Minneapolis to Chicago, where the freight had originated outside of Minneapolis, west or north, and could haul it only from Minneapolis?

A. Beyond Minneapolis?

Q. Yes, beyond Minneapolis.

A. Yes; I wouldn't say as to the direction.

Q. Well, I say beyond.

A. It is very general, and we could take it to Chicago or Peoria at these rates.

Q. And I suppose that that has some relation to the through rate from the point of origination to Chicago, hasn't it, or would it have?

A. It didn't have in every case.

Q. I suppose that is the reason you spoke of it before as an arbitrary, then?

A. Well, it is an arbitrary, but you see an arbitrary rate may be a proportional rate, a proportion of a rate, of course. It is an arbitrary fixed; it may be a billing arbitrary, or an actual arbitrary for the use of the public; but I don't want to get that confused with the 7½ cents which I said was a basis for making the rate.

Q. No. What is the difference between a billing arbitrary and an arbitrary for the use of the public?

A. Well, we might have—our auditor might issue a typewritten statement to an agent saying that, under a certain tariff that named certain rates, you will bill the shipments to their destination at certain arbitraries, which would not affect

the through rate, in any way, shape or manner, like a transit arrangement. For instance, as I have already said, in the case of Fairfax, if the rate would be predicated on 7½ cents above the rate to Minneapolis, we might, if you so desired,—I might not issue the instructions, but the auditor might issue the instructions and make the arrangements with the auditor of another line so as to apply from Fairfax, and I think he does; after collecting the full Chicago rate at Fairfax, if you please, bill it from Fairfax to Chicago at 7½ cents. That would be a billing arbitrary; and he would then arrange to give all of that 7½ cents to the line hauling the business from Minneapolis or Albert Lea.

Q. And keep the other?

A. And keep the balance. The billing, and all that, is a detail of the rate, and sometimes those instructions issue through other men than me.

Q. Then the bills, the way-bills and that sort of thing, don't necessarily speak the truth as to the real amount of freight paid or the division of it?

A. Oh, yes, because you see the billing would show. I am talking of the billing instructions. That would be the bill that would follow the car or go in the usual order to destination, but it would show the entire transaction, so that the integrity of the through rate would bear inspection.

Q. Now, this terminal rate, that was put in in 1907 (this new tariff here) under that, as I understand it, you can ship freight from Minneapolis to Chicago and Peoria at the rate specified in it without regard to where the shipment originates?

Mr. BUTLER: What is the number of that?

WITNESS: G. F. O., 150–A. I should think anything that would come into Minneapolis could be shipped out on those rates. I don't think we could charge a higher rate than in those tariffs as I have read them.

Q. And as an illustration, if it were produced in Minne-

apolis or had been brought to Minneapolis from any point, it would be shipped out on those rates to those points?

A. I think so.

Q. Now, that would not be true under a proportional tariff, would it?

A. Yes.

Q. Well, it was, in fact; under that through tariff, but, strictly speaking, a proportional tariff would require you to restrict the rates fixed in the tariff to freight originating outside of Minneapolis and in the territory specified, wouldn't it?

A. Under the present federal law I don't think that any such proportional rate could be made.

Q. No, but as it was before.

A. Years ago, I imagine that a proportional rate didn't mean what I claim it is now.

Q. Take the tariff you referred to as showing the proportional, a few minutes ago; it is M. & St. L. and Iowa Central G. F. O. 3290; I noticed, when you were reading, that it was a "joint proportional tariff" on the front page, and you turned it over and said you found, also, a statement that the "Above rates are terminal rates and will not apply from and to intermediate points." Now, the effect of that provision was that any freight, no difference where it originated, might be shipped from Minneapolis to those points at the same rates, was it not?

A. No; that meant, for instance, just what it says there, when it is used with reference to the tariff, "Above rates are terminal rates and will not apply from", for instance, intermediate points. I don't read the "to intermediate points" because we haven't taken down the north-bound rates, so that in reference to what I have testified, the clause or the reference reads, "Above rates are terminal rates and will not apply from intermediate points", so that a 10-cent rate on wheat from Minneapolis to Chicago would not necessarily apply from New

Prague or Waseca or Hartland or intermediate points to the same points.

Q. Yes, but what I want to get clear in my mind is this: Whether the statement that the "above rates are terminal rates" nullifies the statement that they are joint proportional tariffs so that they may apply to all freight shipped from Minneapolis without regard to where it originates or without regard to it being a portion of a through rate.

A. But it applies on shipments originating beyond Minneapolis.

Q. I say only upon those.

A. Yes, only upon those.

Q. Then it hasn't the effect to change that feature of it?

A. I don't think that has the effect to change that feature of it; it just simply adds to the clearness of its meaning, so far as I would be concerned, anyway.

Q. Well, I rather gathered from your testimony before, that it was your opinion that the Minneapolis & St. Louis and Iowa Central No. 1081—

A. Well, that is the Interstate Commission number. This is our number.

Q. Yes, general order No. 150–A, isn't it?

A. Yes, No. 150–A.

Q. —was promulgated, really, to legalize or to make the paper-rating instructions correspond with what had come to be the practice under general G. F. O. 3290.

A. If we could, we have tried to make it clearer as to the exact application of the rates; that is what we aim to do. We did exactly what the Rock Island have recently done, and the other roads.

Q. Well, as I say, I understood from your testimony that the reason for, or one of the main objects, of this G. F. O. No. 150–A, was to put a rate on paper which would indicate cor-

rectly what had come to be the practice or the practical construction of G. F. O. No. 3290.

A. Well, so far as my understanding is concerned, and so far as I have any relation to those tariffs, I try to make 150–A express more the real transaction than M. & St. L. 3290, in the light of subsequent developments.

Q. That is it. But the practice had been, practically, before that, for some time, in accordance with what you prescribed in No. 150–A?

A. I think the effect under the two tariffs is the same, practically.

Q. That is, in actual operation?

A. In the actual operation. I think that a shipper could do under one practically what he could do under the other.

Q. And yet, on the face of it, under No. 3290, these rates, from Minneapolis to Chicago and Peoria and these other points, were confined to shipments originating beyond Minneapolis?

A. Yes, beyond.

Q. Whereas, under G. F. O. No. 150–A, they are not so confined, are they?

A. I shouldn't think so. If the sentence was here it wouldn't mean anything beyond what the tariff itself expresses. Let us see if it is here.

Q. You didn't read it.

A. No, I don't think it is in here. I don't think it would be necessary to be in here, because "beyond" would mean outside of Minneapolis.

Q. Yes, or in Minneapolis.

Mr. BUTLER: "Beyond" wouldn't mean in Minneapolis.

Mr. DURMENT: No.

WITNESS: Well, I mean outside.

Q. But this tariff applies to everything that is given to reduce in Minneapolis this 150–A?

A. Well, I don't think that.

Q. Look at it and see if there is anything there that excludes those commodities from that rate, regardless of where they originated, so long as they are transported from Minneapolis.

A. I think there is nothing there that shows that. I don't find anything there. It says, "The above rates are terminal rates and will not apply as maxima at intermediate points."

The MASTER: That is, between Minneapolis and Chicago?

WITNESS: Yes, intermediate points south of Minneapolis. I think that perhaps the tariff modification was made to prevent any manipulation of the kind that you are discussing now. I don't believe there is any wheat grown in Minneapolis, and I believe that if the agent was offered a shipment of wheat, he would be perfectly warranted in billing it out at the proportional or 10-cent rate assuming that it was grown and shipped in from some other point, because there you see the modified tariff makes it a terminal rate and gives the agent a specific authority that saves him from doing anything wrong, whereas, under this tariff here reading "joint proportional tariff," there would be some question about it.

Q. In other words, there was a question, under the 3290, as to whether the application of that tariff was not limited to products of certain territory?

A. It was a question if its wording or effect was legal, and, as the Interstate Commerce Commission and the courts kept determining that question, we have tried to put our tariffs to be actually in line with their conclusions.

Q. And under 150-A it doesn't make any difference where the shipment originates or where the commodity is produced which is shipped from Minneapolis, it takes that rate?

A. I am inclined to think that is the real interpretation of the tariff. Now, someone will determine that; so far as I know, that is the effect with us.

Q. There is nothing in this proportional rate to indicate

anything different, is there, or in this tariff which you have produced and from which you have testified? If there is, point it out.

A. I have pointed out all that I can about the tariff. Now, we are talking about the effective working of that tariff, I think that the effect of the tariff is to be exactly as it reads, Mr. Durment.

Q. But I am not a railroad man and the question in my mind is as to whether it reads to you, as a railroad man, as it reads to my mind. Now, is there anything in that tariff which, to your mind, indicates that those terminal rates you have referred to in G. F. O. 150-A, or any of them, would not apply to any and every shipment—

A. No.

Q. —offered in Minneapolis, regardless of where it was raised or where it originates?

A. No; and I consider that 12½, or the local rate in there, as pure nonsense and have ordered it out, so that the 10-cent rate would apply on everything. It is a rate put in there to protect intermediate points and don't amount to a row of shucks. We will take it out. That will make the tariff clear. Then it will be a terminal tariff not applicable to intermediate points, and will take in points from beyond Minneapolis, just as it says.

Q. Or right in Minneapolis? It doesn't make any difference where it comes from, does it?

The MASTER: That is, supposing a car is loaded from farmers' wagons in Minneapolis?

Mr. DURMENT: Yes.

The MASTER: And shipped to Chicago.

WITNESS: I have no doubt that it would take the 10-cent rate under some transit arrangement, because they would simply take the grain and put it in instead of the dirt they took out, and we wouldn't know the difference.

Q. Well, but that isn't the question—

A. That can be done under that through rate.

Q. Under this general order No. 150-A, wouldn't the farmer in Hennepin county have a right to come and load the grain (a carload of grain left in your yard) into your cars and demand the tariff rate there?

A. There is no grain—

Q. Answer that question.

A. There is no farmer that sells any grain from Hennepin county to elevators in Minneapolis.

Q. Well, we will assume that there are.

A. Well, I can't answer the question.

Q. What would be the situation under this general order No. 150-A?

A. The miller would buy the wheat.

Q. Well, supposing the miller didn't.

A. But he will.

The MASTER: Take the case supposed, Mr. Tittemore. Supposing a farmer did load up a car from his own farm—

WITNESS: Yes.

The MASTER: —in Minneapolis, or in that vicinity there; now what would be the rate to Chicago?

WITNESS: I think it would go out on a transit rate and we would know nothing about it. I think it would follow right in and take the place of the dirt that is taken out. They do that right along, and always have, under every milling-in-transit or concentrating arrangement in the world.

Q. Now, we will assume a thing that, for the purpose of this case, we will take to be true: That I own a farm in Hennepin county; for some fool reason I conclude that I have got a carload of wheat, I conclude I am going to ship it to Chicago, I haul it to your road, demand a car to ship to Chicago, you place the car there and I load it; now, then, haven't I a right to

compel you to ship that, under the tariff fixed in your G. F. O. No. 150–A?

A. Yes. I don't know whether it would be the 12½-cent or the 10-cent rate.

Q. I don't care anything about that.

A. There are two rates there, but it would be billed out under that tariff.

Q. Now, we will take another case, then. We will take a case where I bring in a carload of corn and load it in one of your cars, demand a car and you put it on your side-track at your station, and I load my carload of corn into your car for Chicago. Am I not entitled to a 7½-cent rate under G. F. O. 150–A?

A. I should think so, and I would not consider that, if the thing was the reverse, Minneapolis would be much of a grain market for fifteen seconds, except for the farmer in Hennepin county. What would he do outside of Hennepin county? This tariff is billed—

Q. I want to get at how it operates.

A. The tariff operates that way, but that is such an extreme—

The MASTER: There is no corn in Hennepin county to be shipped?

WITNESS: Not a carload. I don't suppose there ever was, or ever will be.

The MASTER: It isn't a practical question?

WITNESS: It isn't a practical question. It never has come up for practical solution by me.

Q. Another thing. (I would like to know about this particular matter before I leave it). Here all day yesterday and the day before, as I remember it, you said that on shipments of wheat the arbitrary from Minneapolis to Chicago was 7½ cents.

A. I may have been misunderstood, Mr. Durment, but what

I meant to say, and now say, is that the rates from the territory west of Minneapolis are based upon 7½ cents to Chicago above the rate to Minneapolis, and the line hauling the freight from Minneapolis or Albert Lea to Chicago gets 7½ cents per hundred pounds; so that really the rate is based upon 7½ cents from Minneapolis to Chicago, but that is not the *rate* as these tariffs show.

Q. Well, that is all right. The fact, then, is that in the cases you have been speaking of, the roads which hauled from Minneapolis to Chicago got 7½ cents a hundred pounds?

A. That is it.

Q. Now, then, if that is true, what had this joint proportional tariff No. 3290 to do with it?—That fixes a proportion of 10 cents to Chicago, doesn't it?

A. Yes, but I am speaking about the rates from off the Minneapolis & St. Louis road being based upon 7½ cents per hundred pounds to Chicago *via* specific tariffs. This rate may be fixed by the Wisconsin Central road as a 10-cent proportional rate. Now, certainly, as I have stated (or think I have stated), if the man shipping from Boyd, or, if you will, the elevator, having wheat at Boyd, sells to the miller owning the mill at Fairfax, the Fairfax man may make his transaction through over the line to Chicago on the basis of the 7½ cents above the rate to Minneapolis. Now, he is not going to bill that in locally to Minneapolis and pay 10 cents to Chicago when he has got a through-rate arrangement that makes on the basis of 7½ cents. That is exactly how the man in Fairfax lives in competition with the man at Minneapolis. If he had to pay the 10-cent rate he would be at a disadvantage.

Q. Well, then, this "joint proportional tariff" No. 3290 had nothing to do, while it was in force, with shipments of the commodities therein mentioned over your line to Chicago; is that right?

Mr. BUTLER: Mr. Durment, there were other tariffs cover-

ing the illustration, of course.

Mr. DURMENT: This covers wheat.

Mr. BUTLER: From Boyd, to be milled in transit at Fairfax and thence shipped to Chicago. That tariff doesn't cover that, does it?

Mr. DURMENT: Well, I so understood it.

WITNESS: Oh, no, it has nothing to do with it. That is under a through tariff. I can answer your question, Mr. Durment, and I believe the two cases will become plain to you then.

Q. Well, just a minute. This doesn't cover wheat, does it?

A. Oh, yes.

Mr. BUTLER: You are assuming that the tariffs mentioned were all the tariffs, and there are many thousands of them.

Q. Now, I will tell you what I am getting at, maybe you can explain it. From some of your testimony I have been led to believe that this 7½-cent rate from Chicago, which you testified that your shippers got the advantage of, was based somewhat or in some way related to the proportional tariff as fixed in your rate-sheets; and now, when you produce these rate-sheets, it appears that the proportional from Minneapolis to Chicago was 10 cents, instead of 7½ as I understood you.

A. I have testified all through to my very best knowledge and belief, and I am testifying now to what those tariffs claim, and if you have that understanding from me it would be incorrect upon your part, and if I made such a statement it would be incorrect and made under a misapprehension of the fact on my part.

Q. Then this arbitrary of 7½ which you have spoken of for the shipment from Minneapolis to Chicago, has nothing to do with a proportional tariff?

A. Well, so far as any arbitrary I know of, it has none. I don't exactly know what you mean by an "arbitrary."

Q. Well, you have used the term as a fixed sum agreed upon by the roads to be paid, as I understood it.

A. Well, it is in the rate, but not the rate. It is the billing arbitrary; it is the amount that the other line gets from us. Now, Mr. Durment, to show you what I mean,—suppose Alexandria, on the Great Northern road, has no through rate over our road or the Wisconsin Central to Chicago; they don't propose to let us have their local grain at Alexandria, they want to give it to their Burlington route; they bring it down here; the rate may be a local rate. Now, we make a proportional 10-cent rate because we can get that from this nearby territory; we don't make a 7½-cent rate for the Great Northern railroad, although they may do it in connection with the Burlington road in a through tariff, but in order to keep our milling industries on a parity, not permit discrimination as or in competition with the Alexandria miller, we make an arrangement down here, a through arrangement down here, based upon 7½ cents from Minneapolis to Chicago, call it anything you will—"a rose by any name smells just as sweet,"—and you may call it an arbitrary or part of a through rate, anything you please; it is there; it is like the fellow's overcoat, in the expense-account.

Q. Well, I think that is right, and I am trying to find out what article in the expense account it is in.

A. Well, I am trying to tell you, Mr. Durment, really and truly.

Q. Well, I know.

A. You see there is no such thing as a 7½-cent rate on wheat from Minneapolis to Chicago, and if you have understood my testimony to be that, then you or I are wrong, because there is no such thing.

Q. I understood you to testify, and didn't you testify that on stuff which originated from out of Minneapolis, brought into Minneapolis by your road, wheat, for instance, you could send it over the Burlington or the Milwaukee to Chicago for 7½ cents?

A. If I did, I made a mistake, Mr. Durment.

Q. What would you have to pay to send it over the Burlington or Milwaukee?

A. 10 cents, unless I used a through tariff; if we had a through tariff, they would take 7½ cents, and that was what I was testifying, and that is what I mean.

Q. If you had a through tariff?

A. Yes.

Q. It might not be a question of through shipment but a through tariff; that is, if you had made arrangements with them by which you were entitled to make a through tariff from the point west of Chicago over their lines, and did make such a through tariff, then they would take 7½?

A. That is what I testified to and said that was the fact, from every junction on our railroad. All railroads will take that arbitrary from us.

Q. But in case you didn't have that arrangement for a through rate, but simply hauled it over your line to Minneapolis and then wanted to route it out from Minneapolis over the Burlington or the Milwaukee, you would have to pay 10 cents; is that right?

A. Well, we wouldn't have to do it, because we would arrange to have it under a proper through tariff, but if some man came along who didn't know, or there was no tariff applicable, it would take 10 cents. I don't suppose there is very much of it shipped at 10 cents.

Q. Suppose you had not made the arrangement for a through tariff?

A. 10 cents would apply.

Q. And you would haul it in and then they would have to pay 10 cents?

A. Yes.

Q. You had, though, during all the period you speak of, an arrangement with all those roads for a through tariff, hadn't you?

A. Well, October 1, 1905, would cover the period we are discussing here. We had a joint freight tariff on flax, millet-seed, grain and grain products in carloads, grain and grain products (that would include wheat), between Chicago, Milwaukee, Peoria, or common points, as per certain pages, and stations on the Minneapolis & St. Louis railroad and Iowa Central railroad and other small railroads.

Mr. BUTLER: What companies joined in that?

WITNESS: And I see that the Albia & Centerville, the Chicago & Alton Railway, the Chicago Northwestern Railway, the Chicago, Burlington & Quincy Railway, the Chicago Great Western Railway, the Chicago, Milwaukee & St. Paul Railway, the Chicago, Rock Island & Pacific Railway (east of the Missouri river), the Cleveland, Cincinnati, Chicago & St. Louis Railway, the Illinois Central Railroad Company (northern and western lines), the Indiana, Illinois and Iowa Railway, the Mason City & Clear Lake Railway, the Muscatine, North & South Railway, and the Atchison, Topeka & Santa Fe Railway companies all joined in that tariff.

Mr. BUTLER: Give us the number of that.

WITNESS: That tariff is M. & St. L. G. F. O. No. 6000, Interstate Commerce Commission No. 1,485.

Q. Then at all times up to the commencement of this pending lawsuit, your road could ship wheat out from Minneapolis to Chicago over several different lines at 7½ cents per hundred weight?

A. Only if it came directly from the through point named in this tariff.

Q. Yes, I mean you could start your wheat from the territory outside of Minneapolis and bring it into Minneapolis, and from Minneapolis send it to Chicago over any one of a number of lines for 7½ cents.

A. They would haul it for 7½ cents as their proportion of the through rate; that was the money they would receive for performing the service.

Q. Well, I mean—put it this way, then: You could take a shipment from your territory outside of Minneapolis to Chicago at a through rate, haul it to Minneapolis and send it from Minneapolis to Chicago over any one of a number of roads, and pay the road over which you hauled it 7½ cents per hundred weight from Minneapolis to Chicago at the through tariff?

A. Yes, I think that is true. Now, if you will let me illustrate that, then I believe we will be plain on it.

Q. All right.

A. I would take Morton, Minnesota, looking at this tariff No. 6000. Here is Morton, Minnesota. I want to send a carload of wheat to Chicago, possibly to be milled in transit, but not necessarily. I find Morton is No. 65; I find the rate to Chicago from Morton to be 17 cents per hundred pounds; I want to ship it over the Milwaukee & St. Paul road after it gets to Minneapolis, because possibly some man wants to mill it and take it down over that road. I find that stations on the Minneapolis & St. Louis road index Nos. 46 to 95 inclusive, which would include Morton, can be billed out over the M. & St. L. road to Minnesota Transfer, and thence over the Milwaukee road to Chicago; the through rate would be 17 cents per hundred pounds. When the interline statements come to be made up between the auditors, our auditor would allow the Chicago, Milwaukee & St. Paul road 7½ cents out of the 17-cent rate; that would be the money that would be in the draft that would go to the Milwaukee road for the service which the Milwaukee road did on the shipment in carrying the shipment from Minnesota Transfer to Chicago.

Q. Now, in computing the amounts which you say would be lost on Minnesota interstate traffic for wheat and flour in Exhibit 14, I suppose the cost of bringing from Minneapolis to Chicago entered into it?

A. No, not in every case.

Q. Well, in many cases?

A. Well, not in every case.

Q. Well, did it in any cases?

A. Very few; some, particularly on coarse grain.

Q. Did any wheat?

A. Any wheat?

Q. Yes, enter into the computation.

A. Do you want me to say yes or no?

Q. Yes; either yes or no, or "I don't know."

A. Well, I do know and I don't know, and I can say yes and I can say no, but it won't mean anything.

Q. Well, let it appear that way.

A. I can give and I can follow that table right down and show you just how every item is figured in that, because I know.

Q. Well, I ask you whether in arriving at that figure you included anything for wheat from Minneapolis to Chicago.

A. I did not.

Q. You did not?

A. No, sir. There isn't a pound of grain, because I didn't figure any reduction would necessarily follow, not any actual reduction. Every figure in Exhibit 14 is meant to be just exactly what would transpire and was not conjectured in any way.

Q. Then how could there be a loss if there be no reduction?

A. Well, you say any reduction in the Minneapolis-to-Chicago rate.

Mr. BUTLER: Don't you see, Mr. Durment, that from Morton to Minneapolis would be reduced?

Mr. DURMENT: Well, I don't see how there would be a necessity for it, but I will find out from the witness, Mr. Butler, if you please.

Mr. BUTLER: I thought you were under a misapprehension.

Mr. DURMENT: Not at all; I know what I am driving at.

Mr. BUTLER: Well, I feared you didn't.

Mr. DURMENT: Well, I noticed that fear, but don't fret your soul nor worry about our side of it.

Q. Then you figured that, on this interstate traffic, Minnesota interstate traffic on wheat and flour, where you have figured out a loss in Exhibit 14, that you would pay 7½ cents for every hundred pounds from Minneapolis to Chicago; is that right?

A. I didn't figure that.

Q. I mean on wheat.

A. No, I didn't figure that way, because that isn't the rate, Mr. Durment, that is only a part of a rate.

Q. That is all that the road from Minneapolis would get, on your own testimony a dozen times in this case.

A. Yes, but then that doesn't make the through rate and wouldn't be my loss because there is no loss on that, because they absolutely get that.

Q. Well, that may be, but the point I make is this: That, in arriving at this figure here and in making your calculations, you have figured, have you, that in every shipment of wheat from Minneapolis to Chicago, the road that would haul from there to Chicago would get 7½ cents?

A. Yes, sir.

Q. And you have then made your loss entirely upon the haul into Minneapolis?

A. Yes, that is practically so. I am ready to tell you just how I figured that loss on this actual shipment.

Q. I am not asking you that.

A. You see if I answer in one case, Mr. Durment, I can't be candid unless I answer in all cases. Now, I am perfectly willing to give each item, and if I could do that I can clear it up.

Q. Well, I have asked you as to one item now; I may ask you as to all of them before I get through.

A. Well, that is the principle. I didn't use that principle

in every case, because I took exact tonnage moving from a certain point to a certain point. Now, for instance, I find that, by the operation of this tariff here or this proportional tariff, what Commissioner Staples stated yesterday was the fact and which he knew might be the fact, and I find that we figured upon the exact fact, the exact transaction, and that might not be true on wheat and it was true on coarse grain, you see; so that I can't answer and give you what I did as a general method of computation, because I figured each station, each shipment, each kind of grain, separately, and I used a different factor in many cases.

Q. I have not asked you for your general method; I simply ask you whether, on wheat, in arriving at this, you figured that every hundred pounds of wheat which you sent to Chicago from Minneapolis which you had taken from points out of Minneapolis on a through rate, you would pay the road 7½ cents. Now, you said yes?

Mr. BUTLER: What points did you mean Mr. Durment?

A. We didn't have any tonnage at Minneapolis, and Minneapolis is not figured. We didn't take that into consideration at all. There are no shipments out of Minneapolis figured in—

Q. Are there any shipments figured through Minneapolis on this?

A. Into Minneapolis, yes.

Q. Any of the shipments figured through?

A. Well, of course, we don't know what the road would charge. If we take it in there and open it it would probably be 10 cents; I wouldn't know what they charged. For instance, a carload of wheat from Chaska under the old rate would be 5.6.

Q. 5.6 to where?

A. 5.6 from Chaska to Minneapolis. Under the new rate it would be 4.6. Now, if that is a local shipment into Minneapolis, I have lost the difference between 5.6 cents and 4.6

cents, because in that territory right around Minneapolis we permitted the stuff to go in there on these local rates rather than pull down the through rate from the local territory below that to Chicago. Now, that would not always apply on wheat nor on coarse grain, but generally speaking it does apply.

Q. That is to say—

Mr. BUTLER: Let him explain what he means by "pulling down," will you?

Mr. DURMENT: All right.

WITNESS: If I was to take Hopkins, for instance, the rate from Hopkins to Minneapolis might be three cents per hundred pounds; we know in reality there is no wheat at Hopkins to be shipped; the rate from Minneapolis to Chicago would be 10 cents; the through rate, if it was the sum of the local rates, would be 13 cents. Now, our through rate from all of these points south of Minneapolis to Chicago on wheat is 15 cents; so, to prevent a paper rate from destroying a lot of rates, we actually do a large amount of business (and it seems to be satisfactory to the shipper south of Minneapolis,) we let them haul this business in locally and take these rates out—that is, the rates that are in the tariffs that we have been talking about this morning,—for instance, our No. 150-A now in effect.

Q. You let them haul it into Minneapolis locally?

A. Can't help it.

Q. And take these rates out?

A. They can take these rates under our reasoning this morning.

Q. That is, you allow them to pay the local into Minneapolis?

A. And that settles it with us.

Q. And then you allow them to take the Chicago rate from Minneapolis to Chicago?

A. We can't help it. It leaves our rails at Minneapolis; we have nothing to do with it after it arrives at Minneapolis.

Q. Do you mean by that you won't make a through shipment from a place like Hopkins?

A. Yes, but they don't want to pay our higher rate, which would be 15 cents per hundred pounds, so they may bill in on the local rate,—we can't refuse to let a man bill into Minneapolis on a local rate.

Q. That is, your through rate from these stations would be greater than the sum of the local and the published tariff from Minneapolis to Chicago.

A. That is it, Mr. Durment.

Q. Now, then, when you say that,—

A. Let me make that plain.

Q. You mean it would be 10 cents from Minneapolis to Chicago, under those circumstances, or 7½?

A. 10 cents.

Mr. BUTLER: That is because there is no through rate published from these points.

Q. That is because the through rate is higher than the sum of the two local rates?

A. Well, there is a through rate, Mr. Butler, of 15 cents, and in that case we would allow the line from Minneapolis to Chicago 7½ cents, but we would have the balance, and the shipper would be paying 15 cents, whereas, if he wants to call them all local, 3 cents in and 10 cents out, he gets a 13-cent rate, and he has a right to do that.

Q. Now, in figuring this amount of loss here in Exhibit 14, as I understand it, in all those cases where the local rate into Minneapolis, plus the tariff rate from Minneapolis to Chicago, is less than the through rate, you have figured only that you would lose, under this proposed tariff, the difference between the local rate and what the law fixes as the rate?

A. Yes; that statement explains exactly what it is. Now, if the shipment moves—

Mr. BUTLER: You mean in Exhibit 14?

WITNESS: I mean Exhibit 14 states exactly what the figures are. Now, if that tonnage, moving under the time stipulated in that Exhibit 14,—if the tonnage actually moved to Minneapolis (and that is the way the way-bills showed) and it moved say, for instance, wheat, on a rate of 5.6 and it was reduced (and it would be reduced under the statute to a rate of 4.6) the difference would be the loss that we would have sustained upon those actual shipments had the new rates been in effect.

Q. Yes, I understand that; but this total loss here is made up from a number of shipments?

A. Yes.

Q. And I understood you to say, a few minutes ago, that each was figured upon its own facts and there was no rule that applied to every shipment.

A. Not to every kind of grain.

Q. No, no, I am speaking now as to wheat alone.

A. Yes. Well, wheat.

Q. Now, I understand, from this illustration you have here, that in the cases where the sum of the local from the point of shipment into Minneapolis and the local or tariff rate from Minneapolis to Chicago was less than your published through rate from that initial point to Chicago, you figured the loss on a shipment of that kind by taking the difference between the local tariff rate and what the statute would have compelled you to charge if it had been in force?

A. Yes, where the shipment actually moved into Minneapolis on the local rate with no statement on the billing that showed it was not a local shipment.

Q. And in that event you paid no attention whatever, in arriving at the particular loss on that particular shipment, to the Chicago rate?

A. Well, that shipment didn't move to Chicago, but I did figure the relation of loss that would apply on Chicago shipments that moved.

Q. Well, let us keep to one thing. In this particular class of cases you have spoken of, where they moved to Minneapolis upon the local rate, with nothing to indicate that they were going through to Chicago, the amount you included in this total loss here for that particular shipment was the difference upon that shipment between the then local rate into Minneapolis and what the statute would have made the rate into Minneapolis, is that right?

A. Yes, sir, I didn't undertake to make the loss more than it would be.

Q. And you didn't figure any loss by reason of anything that would take place on the movement of that grain through to Chicago?

A. I wouldn't know whether it was going to Chicago or not; I didn't, because there was nothing, there was no reason why I should.

Q. Suppose a case of a shipment where it originates on your road in Minnesota at a point between which and Chicago there is a through rate over your road, and it is understood that the wheat or its product will go to Chicago and that through rate between this point and Chicago is less than the sum of the local rate from this point to Minneapolis and the tariff rate from Minneapolis to Chicago, how would you figure the loss which you carry into this total here?

A. There was no such conclusion presented to me in the getting up of those figures.

Q. Then there would be no cases of that sort?

A. I can't remember of a single case where the through rate —I don't believe I get your question, Mr. Durment, and if I can't—

Question read.

Mr. BUTLER: Is that a shipment *via* Minneapolis, or *via* some other point?

Mr. DURMENT: *Via* Minneapolis, of course.

A. The question is not exactly clear to me, but on the through shipment we would allow the other road 7½ cents per hundred pounds, and we would take the whole loss ourselves.

The MASTER: Isn't that 7½-cent rate a constant factor in all your figures?

Mr. DURMENT: Why, he has sometimes said so and sometimes not.

The MASTER: Well, that is what I want to know. Take this Exhibit 14, isn't 7½ cents a constant factor in all your figures?

WITNESS: Not in all of them, no.

The MASTER: Well, wherever that is applicable?

WITNESS: Yes, wherever it is applicable, your Honor.

Mr. DURMENT: In wheat, for instance.

The MASTER: It is applicable to every shipment that goes from Minneapolis to Chicago, isn't it?

WITNESS: Not from Minneapolis to Chicago, because we have no such rate from Minneapolis to Chicago, but would be applicable upon all shipments from west of Minneapolis to Chicago when on through billing, that is, the through rate would be based upon 7½ cents; but there is no such thing as a 7½-cent rate; it is a part of a through rate.

The MASTER: Well, in making up Exhibit 14, what I think we are all trying to get at is whether or no the 7½-cent rate from Minneapolis to Chicago is not a permanent factor, a constant factor.

WITNESS: A very constant factor, but it doesn't apply to all these shipments.

The MASTER: Well, that may be, but—

WITNESS: I have already testified, time and time again, that all my rates are based upon 7½ cents above the rate from Minneapolis to Chicago except in a few instances where the sum of the local rates make a less rate and the law would not permit me to charge or compel a man to ship at a higher rate; in that case the 7½-cent rate is absolutely out of it, because the rate

from Minneapolis to Chicago is 10 cents.

Mr. BUTLER: Now, I wish you would permit Mr. Tittemore to explain, if it isn't already understood, the difference between the relation of rates to Minneapolis and St. Paul being 7½, applicable to certain territory, and the fact of a 7½-cent rate; that is to say, the difference between the relation of rates to the two points and a rate itself between the two points. Do you get what I am trying to say, Mr. Tittemore?

WITNESS: Yes, I get exactly what you are trying to say.

Mr. BUTLER: I wish you would try to make that clear by illustration or definition or any way; I think illustration is the best.

WITNESS: Well, I will try to make it plain, but if I can't make it plain I wish they would get some other witness to try to make it plain. I know exactly what you want to know.

Mr. BUTLER: May he answer my question?

Mr. DURMENT: Why, if he wants to.

WITNESS: I will endeavor to do it, because I think it is only right that I should. Now, I began yesterday, you know, or day before, in speaking of the Fairfax case, because that was the first case that came to me as a traffic man for the M. & St. L. road. A mill had burned down; there was nothing but the scrap there; I forget the man's name who first came to me, but he said, "Tittemore, we will buy that mill-site and we will pay for that boiler that has been injured by the fire more than it is worth if you will give us a rate on wheat and on flour that will enable us to mill there in competition with people around us and in Minneapolis." "Well," I said, "will not the general basis do?" He was a man from out of the state, not well acquainted with it. He says, "What is it?" "Well," I said, "the rate on wheat from all territory west on our road to Chicago, or upon flour milled at Fairfax, will not be higher, ever, so far as I can help it, than 7½ cents above the rate to Minneapolis." Then I put in the rates, the through rates from all territory west of

Fairfax, upon the through tariff to Chicago, say 17 or 18 or 19 cents; but whatever that rate was, it was exactly 7½ cents above the rate to Minneapolis. Why? Because there is a rate up to Duluth, usually of 5 cents. Now, what is the use of my road—having no rails to Duluth—offering a man anything above 2½ cents above what he can get it through Duluth or Gladstone at? I fixed that as the figure—experience fixed it as the figure—it was not new with me. He said, "All right, we will go in on that basis." Now, that doesn't mean that there is any 7½-cent rate from Minneapolis to Chicago, although that is the proportion that the other line charges us to take Mr. Fairfax's freight to Chicago, and we pay it in joint account, but there was another factor, no doubt, that fixed that 7½-cent rate in years gone by. The traffic-man had to determine pretty closely for his local man what the miller from Minneapolis to Chicago was getting as a rebate, and if the rate from Minneapolis to Chicago was 10 cents, we knew it was about 7½ cents actually from Minneapolis to Chicago, and to keep Mr. Fairfax on a proper basis we arrived at 7½ cents. We went further than that. We went to the mills at Minneapolis and asked the miller what he was getting net. Well, he might say, "Tittemore, you know your rate is 10 cents, and we are paying 7½." It was made evident to me, inquiry made it evident to me, that I should give Mr. Fairfax a rate that would enable him to haul his freight from Minneapolis to Chicago at no higher rate than Mr. Pillsbury or Mr. Washburn or Mr. Anybody Else, and that is exactly how that relation of rates was fixed. The Northwestern road said to the man at Sleepy Eye, to the man at New Ulm, the same thing, only as you get down towards Albert Lea the Chicago lines and the city of Chicago (which is a power) would say, "We won't allow you 7½ cents difference; we will make it 5, we will make it 4½, we will make it 6 or 7." In the case of New Ulm the difference is 7, in the case of Albert Lea 5½. So that 7½ cents may be a constant factor from one district but

not a constant factor from another district; but the difference in the relation of rates as between certain points in Minnesota and Minneapolis and Chicago is always a constant factor, but the factor changes. Now, am I plain?

Q. You have been plain to me all the time along that line.

A. But there is no 7½-cent rate from Minneapolis to Chicago, it is a 10-cent rate, but the through rate is based upon that. Now, your Honor, supposing the shipment was at Albert Lea and going to Chicago, supposing it was from Albert Lea to Chicago; the rate from Albert Lea to Minneapolis, under the old tariff, under which these figures would be made, would be 9 cents from Albert Lea to Minneapolis. Now, the difference in the case of Albert Lea—the relation fixes a difference of 5½ cents that is agreed upon, (more or less sand-bagged into the Minneapolis roads by Chicago and the strong Chicago lines,) but there the difference is 5½, so that the through rate from Albert Lea to Chicago is a 14½-cent rate but is not 7½ cents above the rate to Minneapolis, so that it is not a constant factor in every shipment but generally a factor.

The MASTER: Well, isn't it always a factor where the grain goes through Minneapolis?

WITNESS: Well, one more illustration will answer that, your Honor. For instance, take the rate from Montgomery, where there is a large mill, let us figure it out, (I haven't figured it.) Under the old distance tariff the rate would be 7 cents per hundred pounds. Now, the rate out would be 10 cents per hundred pounds. There would be 17 cents *via* Minneapolis; but the rate is 15 cents from Montgomery to Chicago by Albert Lea; 7½ cents would be a factor there because we would allow 7½ cents, as I have testified, to the line from Albert Lea to Chicago, just as we would from Minneapolis to Chicago if the through rate read and was routed *via* Minneapolis instead of *via* Albert Lea.

The MASTER: It is a constant factor then, isn't it?

WITNESS: Well, the 7½-cent rate doesn't figure in that at all. That is, the basis of the rate is not 7½; the basis of the rate is 5½ cents and the 7½ cents division. You see there is where we ought to understand ourselves, as between that relation of a rate which is based and made 7½ and the division of a rate the relation of which to other rates is not made upon the basis of 7½ cents.

Mr. BUTLER: That is to say,—

WITNESS: Don't ask me anything more now.

Q. As I understand it, at the rate which was in effect during the period covered by Exhibit 14, there was a through rate from Morton to Chicago of 16½ cents by way of Minneapolis. Now, what was the local rate from Morton to Minneapolis?

A. The local rate from Morton to Minneapolis on wheat and flour would be 9 cents per hundred pounds.

Q. Now, the tariff from Minneapolis to Chicago was 10 cents?

A. Yes.

Q. Then to ship from Morton to Minneapolis, not on a through rate but on the local, then reship from Minneapolis to Chicago, would cost 19 cents—

A. That would be the sum of the local, yes.

Q. —which would be greater than the through from Morton to Chicago?

A. Yes.

Q. By 2½ cents?

A. Yes.

Q. Now, in a case of that sort, what did you figure would be the loss on a shipment of that kind in making the figures of loss on wheat and flour in this Exhibit 14?

Mr. BUTLER: That is, you don't mean a shipment moving on the sum of the two locals, do you?

Mr. DURMENT: No, I put a case of this sort. Now, then, I want to know what he says would be their loss.

Mr. BUTLER: A shipment where,—Minneapolis to Chicago?

The MASTER: That is, you figured the loss under Exhibit 14 on that basis?

Mr. DURMENT: Yes. You figured the loss in Exhibit 14 upon the basis of a shipment from Morton to Chicago?

WITNESS: The through rate was 16½ cents per hundred pounds; the old rate was 9 cents per hundred pounds from Morton to Minneapolis. My through rate is based 7½ cents per hundred pounds above my rate to Minneapolis, which is 16½ cents; the statutory rate changes my rate from Morton to Minneapolis to 7.8 cents per hundred pounds on wheat and flour.

Mr. O'BRIEN: 7.9, isn't that?

WITNESS: It is exactly 7.8 in my tariff we had ready to put in the day the injunction was issued.

Mr. O'BRIEN: I make Morton 107 miles. What is the distance to Morton?

WITNESS: 100 miles. That would be 7.8, Mr. O'Brien.

Mr. O'BRIEN: Yes.

WITNESS: Now, the rate under the statute would be 7.8 cents per hundred pounds. My relation is 7.5 cents above the rate to Minneapolis, which makes a 15.3-cent rate as against a 16.5-rate, or a reduction of 1.2 cents per hundred pounds, and that is the way Exhibit 14 would be figured in a case of that kind.

Q. Then you would treat your 7½ cents from Minneapolis to Chicago as a constant factor in cases of that sort, and the reductions would be made upon the 9 cents which you would get out of the through rate?

A. In every case where the rate is based on 7½ cents above Minneapolis rate, the deduction would come and is figured out of the Minneapolis & St. Louis Company's earnings.

Q. Now, let me ask you this question: The sum of the two locals, that is, from Morton to Minneapolis and from Minneapolis to Chicago, upon the basis of 7.8 and 10 cents, which was

the local from Minneapolis to Chicago, would be 17.8, would it not?

Mr. BUTLER: That is under the local in Minnesota and the—

Mr. DURMENT: That is the local which the statute provided for in Minnesota and the ten-cent rate which the roads had in, from Minneapolis to Chicago.

A. Yes.

Q. So that the local, under the statutory rate which had been put in, and the rate which the roads had in from Minneapolis to Chicago, would make 17.8, which is higher by 1.3 than the old through rate, isn't it?

A. Yes.

Q. Then why couldn't you make your rate from Morton to Chicago, say 17.8?

A. Well, how would the man at Morton compete with the man at an opposite point?

Q. I am not asking that question.

A. Well, competition—

Mr. BUTLER: He is answering your question.

WITNESS: Competition would not permit me to do it.

Q. Oh, competition would not permit you to do it?

A. No.

Q. But you could still charge the man from Morton to Chicago a 16.5-cent rate and keep your 9 cents, and he couldn't ship over your line to Minneapolis and Chicago for less, could he, by taking the two locals?

A. I would like to know how to compel the other roads to permit me to do that.

Q. I am not talking about the other roads, but take your own line.

A. No, I couldn't do any such thing under the circumstances.

Q. If you will listen to my question and answer it, I would

like it, Mr. Tittemore. The point I make is this: That, so far as shipments from Morton over your road to Minneapolis are concerned and from Minneapolis to Chicago, the Morton man could not ship into Minneapolis on your local rate of 7.8 and ship out from Minneapolis to Chicago and save anything under his 16.5 cents, could he?

A. If he shipped from Morton to Minneapolis on the 7.8 rate, that would be a local rate; the transaction would cease at Minneapolis so far as these tariffs are concerned. If he then shipped to Chicago he would pay 10 cents per hundred pounds, which would be 17.8, the sum of the two local rates.

Q. Then during the period covered by Exhibit 14 here, taking the cases such as Morton, you could still have charged for your interstate rate 16½ cents, of which you would get 9 cents and the other line 7½ cents, except for the possible fact that some other road might make a less rate and beat you out of the business?

A. I don't agree to that proposition. I have no authority to make rates over the Chicago, Milwaukee & St. Paul or the Burlington roads, and I have no right to manipulate with the shipper and charge less than 7.8 cents, or more; it is a transaction from Morton to Minneapolis, collected for on the basis of 7.8 cents, and as long as the man wants it to go from Morton to Chicago it is a different transaction altogether.

Q. Surely. And then upon the basis of that local shipment from Morton to Minneapolis you would lose, on your way of figuring, the difference between 9 cents and 7.8 cents, or 1.2 cents?

A. That is exactly what we would lose.

Q. But that is upon the basis of a local shipment?

A. That is on the basis of a through shipment.

Q. Oh, no.

A. Oh, yes, that is on the basis of 16½ cents, minus 15.3, which leaves 1.2.

Q. Why, if you take it at 16½, make a through shipment at 16½ (your old through shipment) you would still get 9 cents, wouldn't you, and the other road 7½?

A. No.

Q. Why not?

A. We couldn't do it because my through rate is based on 7½ cents above the rate to Minneapolis.

Q. Oh, well, then, you would lower your through rate?

A. Yes, we would lower our through rate to keep it on the proper relation. Personally, and from a purely railroad point of view, we might work a lot of those combinations, but they are illegal, even then, but when it comes to that, my understanding of the law and my advice from my counsel is that that would be illegal and I wouldn't do it; the result would be that I must use the through rate that is published because the Interstate Commerce Commission says that a specific rate, whether higher or lower, must be the rate used.

Q. Do you mean to say that the Interstate Commerce Commission has promulgated a rule that between any point in Minnesota and Chicago the through rate must be the sum of the locals?

A. No, but I do mean to say that where there is a specific through rate and it might be higher than the sum of the locals, they have promulgated a ruling that the higher rate must go. They have now promulgated another ruling that we are trying to determine what it is—I don't know.

Q. You mean to say that, under the ruling of the Interstate Commerce Commission, you could not make a through rate which was less than the sum of the locals?

A. I could do that. Of course, that is the way a through rate is made, but not in the manner in which you are trying to figure I make it.

Q. You can answer this question yes or no, can't you: Do you mean to say that there was a law of the United States or a

rule of the Interstate Commerce Commission that your through rates must not be higher than the sum of the locals between the points?

A. No, there is no such rule.

Q. There was no such rule. Then, so far as the rule of the Interstate Commerce Commission was concerned, or the laws of the United States were concerned, the roads could make their through rate from Morton 10 cents or 15 cents or 25 cents, just as they saw fit, couldn't they?

A. I think so.

Q. Then, if that be true, why were you compelled to reduce the through rate from Morton to Chicago because you were compelled to reduce your local rate from Morton to Minneapolis?

A. Because, as I have stated, all of our rates are based upon 7½ cents above the rate to Minneapolis. Our elevators are all established with that understanding, our mills all established with that understanding, and every man who does business with relation to that business has that understanding.

Q. Oh, then it is because you have arranged with your shippers that you won't charge to Chicago to exceed 7½ cents above the local into Minneapolis?

A. That is the general arrangement, and besides that we are not the primal factor in it. The other roads—

Q. I am not asking—

A. I am trying to state all of my reasons candidly. There were other roads built into the West before the Minneapolis & St. Louis, and we are meeting their basis of 7½ cents above to Chicago, and if they will change to 10 cents and the milling interests want to change and it is generally acceptable at 10, we can publish a rate based upon 10 cents above the rate to Minneapolis, file it with the Interstate Commerce Commission and advance our rate to 16½ cents.

Q. But this law would apply to everybody, wouldn't it?

A. Of course, the law is supposed to apply—

Mr. BUTLER: What law do you mean?

Mr. DURMENT: I mean this commodity-rate law would apply to all the roads in the state if it applied to any.

Mr. BUTLER: Well, that is a very debatable question. I filed large briefs on that on the temporary injunction.

Q. Well, if it applied to this road it would apply to the other roads?

A. We assumed, up to the time that we were enjoined from putting the rates in force, that it would apply to our road.

Q. And to all other roads in the state?

A. Well, I presume so. If they hadn't put them in, we would, probably.

Q. Then you proceeded upon the assumption in making these computations that the other roads would reduce their through rates in the same way as you reduced yours?

A. I didn't assume anything. First, there was a fixed tonnage, actual shipments moving—

Q. You didn't assume that?

A. I didn't assume that. I can answer that question—

Q. Never mind. Then you proceeded upon the theory that the other roads would not change their through rates, did you?

A. I didn't proceed on any such theory. I believed they would.

Q. Oh, you believed they would?

A. Yes.

Q. Then you figured that all the roads would change their through rates to Chicago if they had to change their local rates?

A. Yes, I did, for the reason that *I* did.

Q. And because you thought that all the roads would reduce their through rate to Chicago to the same extent that they reduced their local rates, you figured that you would have to reduce through rates on the St. Louis road in the same way?

A. I figured that if the relation of rates that had existed for

thirty years was maintained the rates would be reduced exactly in the manner in which I have figured and which brought out those losses.

Q. And you assumed that, inasmuch as that relation had obtained for thirty years, it would continue to obtain, did you?

A. I didn't see how it could be changed without chaos following, and the shippers and every railroad—

Q. I am not asking about the shippers, I am asking about the railroads.

Mr. BUTLER: Well, let him finish.

Mr. DURMENT: No, no.

WITNESS: Well, you irritate me, Mr. Durment, when I am trying to be perfectly candid and sincere in my testimony.

Q. I know you are, Mr. Tittemore, but at the same time you are not sticking to the point.

A. I am sticking right to the point, but I can't stick to your point.

Q. We wont quarrel.

A. I don't want to quarrel, but I don't think I ought to be questioned in an uncandid manner.

The MASTER: You don't have to see his point, Mr. Tittemore.

WITNESS: I don't have to see his point, but I am trying to be candid and honest in my answers.

The MASTER: Just answer the question that is put to you directly without regard to what he is trying to get at.

WITNESS: Well, when I do not understand the question, your Honor, how am I going to answer it?

Mr. DURMENT: Then I will repeat it.

The MASTER: Then say so.

WITNESS: Then I will say so.

Q. Then I understand in making up this figure of loss here, you assumed that because for thirty years the relation of rates had been such that the through rate from these points out of

Minneapolis to Chicago by way of Minneapolis had been the local into Minneapolis with 7½ cents added, that that relation would continue after the locals into Minneapolis had been reduced, did you?

A. I did assume it, and I swore to that in my affidavit.

Q. And you also assumed that not only would that be true in the case of your road, but in the case of other roads which compete with you in your territory?

A. I believed that to be the fact.

Q. And as a result of that you believed and made your computation upon the basis that the through rate from these points to Chicago would be reduced from the then existing through rate by just the amount the local rate would be reduced from the point of shipment into Minneapolis?

A. I did.

Q. And in figuring these losses here, then, you have computed upon actual shipments made (I mean now in figuring the amount of the loss you say you take on Minnesota interstate traffic) you have taken the actual shipments which were made during the period covered by the exhibit and taken the difference between what was actually received—no, taken the difference between what the old local rate into Minneapolis would be and what the local rate into Minneapolis would be at the rates fixed by the statute?

A. Where that appeared to be a factor I used it.

Q. Well, now then, were there any cases where that wasn't true, in the case of wheat say, except in the cases like the first one you put, from Hopkins, where the sum of the two locals would be less than the through rate?

A. I think that is true with regard to wheat, but it would not be true with regard to coarse grain.

Q. I was asking now as to wheat and flour only.

A. As to wheat, yes. I wanted to keep that point distinct because I think that there would be only a few points, and that

the tonnage would be immaterial, where the rate would not be figured as per your illustration, but there would be some points figured differently.

Q. Well, now, then, in what way would they be figured differently?

A. Well, the difference between the rate into Minneapolis as per the old tariff and as per the new, because if the shipment moved from a point in Minnesota to Minneapolis, for instance, on a certain rate, and the freight paid there, and the way-bill taken into account there, of course, so far as my transaction would be concerned of my ability to safeguard, it would be as if the shipment was annihilated, don't you see? so that I could only have for my way-bill a shipment of wheat from New Prague, if you will, to Minneapolis, 5.6 cents per hundred pounds; then, if the new rate was 4.6 cents, there would be a loss of one cent per hundred pounds; I could not assume that the shipment went beyond, in other words, the delivery to the man at Minneapolis.

Q. Well, now, it seems to me, Mr. Tittemore (maybe I am wrong in it) it seems to me from your illustrations that on wheat and flour, without regard to the point from which the shipment was made on your road, and without regard to whether it went to Minneapolis and stopped there or went through to Chicago, you have arrived at this loss by taking the difference between the tariff rate and the rate which the statute prescribes for the actual hauls made in Minnesota.

A. That is on the second item?

Q. In the second item I am speaking of now, of wheat and flour.

A. I think that that is the main,—I think that those factors bring out the main loss.

Q. Is there anything else in it than that at all? If there is, tell me what it is.

A. Now, supposing I was going to go over (I went over

them this morning, Mr. Durment) a stack of figures that high; supposing there was one shipment in there that I hadn't seen, I may have put the rate in and not seen it. I don't want to testify that there isn't a single one; I might as well say that when I looked at a hay-stack I didn't see a needle in it. I didn't see any such shipment, and I don't believe there was one, but if there was one it wouldn't injure our road much. The injury results from figuring just as you have shown, and that is a majority of the shipments.

Recess until 2 P. M.

AFTERNOON SESSION.

The MASTER: Mr. Tittemore, under the old rate, what is the tariff on a carload of wheat from Morton by the way of Minneapolis to Chicago?

WITNESS: 16½ cents per hundred pounds, your Honor.

The MASTER: Pursuing the same course adopted by you in making up Ex. 14 for the purpose of showing the loss on Minnesota interstate business, what would be the rate on the same carload of flour by the same course?

WITNESS: 16½ cents per hundred pounds.

The MASTER: The same?

WITNESS: The same.

The MASTER: There would be no change, then, no difference whatever?

WITNESS: No difference between the two commodities.

The MASTER: There is no loss there at all?

WITNESS: No loss as between the two commodities.

Mr. BUTLER: You observe that you made a case of flour in one instance and a case of wheat in the other?

The MASTER: I spoke of a carload of wheat.

Mr. BUTLER: Well, the first question related to wheat and the second related to flour under the same conditions.

The MASTER: Between a carload of wheat I should have said. I want to take the same carload that we started out with

and I want to know what the rate would be.

Mr. BUTLER: Before and after the application of the statute rates?

The MASTER: Yes, before and after the application of the statute rates.

Mr. BUTLER: (To the witness): Do you get the question now?

WITNESS: Before and after?

The MASTER: Yes.

WITNESS: Under the old rate, the tariff on flour and wheat, both, from Morton to Chicago, would be 16½ cents per hundred pounds.

The MASTER: Now, under the Minnesota statute.

WITNESS: Under the new statute?

The MASTER: Yes. Adopting the same course pursued by you in making up Ex. 14.

WITNESS: Under the new statute?

The MASTER: Under the commodity statute.

WITNESS: The rate on wheat and flour, as I figure it, would be 15.3.

The MASTER: A difference of—

WITNESS: 1.2 cents per hundred pounds.

The MASTER: How did you reach the last result?

WITNESS: I made my through rate by adding the 7½ cents to the rate of 7.8 cents to Minneapolis.

The MASTER: In other words, you used the through rate in the first instance, not the local rate but the through rate, in the first instance?

WITNESS: The through rate in the first instance, your Honor, is made up of 9 and 7½, making 16½.

The MASTER: Well, that would be the regular through rate?

WITNESS: That would be the regular through rate.

The MASTER: And the figures you gave us were by computing the rate from Morton to Minneapolis and adding 7½?

WITNESS: That is it.

The MASTER: That is the mileage rate, 7½?

WITNESS: That is it.

The MASTER: I wanted to see whether I was entirely clear about your method of computation.

WITNESS: That was it.

The MASTER: That is, I wanted to be sure that it was not the local rate that you were using in the first instance but that it was the through rate, to make the comparison.

WITNESS: Yes, I was using the through rate to make the comparison.

Mr. BUTLER: The through rate in both instances?

WITNESS: In both instances.

The MASTER: So that the statement in this instance got the benefit of the lower through rate?

WITNESS: That is it.

By Mr. DURMENT:

Q. Now, let us see about that. But the fact is that the rate of 16½, which was in force before the statute was enacted, from Morton to Chicago, was made up of the local rate from Morton to Minneapolis plus the 7½ from Minneapolis to Chicago, wasn't it?

A. Well, it was made up with those factors but there was no 7½ rate from Minneapolis to Chicago, that was a hypothetical—

Q. I don't care anything about the 7½ rate to Chicago.

Mr. BUTLER: That is what you said.

Mr. DURMENT: I said was made up by the local from Morton to Minneapolis plus 7½ from Minneapolis to Chicago.

Mr. BUTLER: Plus the differential.

Mr. DURMENT: No.

Mr. BUTLER: That is what it is.

Q. Will you just take your tariff-sheet and tell me what was the rate on a carload of wheat from Morton to Minneap-

olis under your tariff local?

Mr. BUTLER: That has all been gone over.

Mr. DURMENT: Well, maybe, but we will do it again.

WITNESS: Under the old tariff, Mr. Durment?

Q. Yes, under the old tariff.

A. The rate on wheat and flour under the old tariff from Morton to Minneapolis would be 9 cents per hundred pounds.

Q. And under the new or commodity-rate act, the local from Morton to Minneapolis would be 7.8 cents?

A. Yes, sir.

Q. So that your through rate under the old tariff was the same thing as the local from Morton to Minneapolis plus 7½?

A. Yes.

Q. And so that your through rate under the commodity act was the same as the local from Morton to Minneapolis plus 7½?

A. Yes.

Q. Then in every instance, under the commodity act as well as the former rate, for wheat shipped over your road by way of Minneapolis to Chicago, the through rate was the same thing as the local rate from the initial point of shipment to Minneapolis plus 7½?

A. That would not be the case every time.

Q. Well, now, tell us, briefly, when it would not be the case and under what circumstances.

The MASTER: Take some instance when it would not be the case.

Mr. DURMENT: Well, if it illustrates the whole. I want to cover the field if I can and get the rule.

The MASTER: We want to see how he made up that table.

A. Under the old tariff, the rate on wheat and flour from New Ulm to Minneapolis would be 9½ cents per hundred pounds. The local rate from Minneapolis to Chicago would be ten cents per hundred pounds. The sum of the locals would

be 19½ cents per hundred pounds, and the old rate of 9½ plus 7½, which would make a through rate of 17 cents per hundred pounds; but that is not the fact, the rate from the New Ulm district, Sleepy Eye and all that section in there bases upon 7 cents above the rate to Minneapolis, which would make the rate from New Ulm to Chicago 16½ cents routing *via* Minneapolis over our road to Chicago on wheat and flour. There is a rate of just three cents under the sum of the local rates and just a half a cent under the combination of the rates based upon 7½ cents, and we allow to the line from Minneapolis to Chicago 7½ cents per hundred pounds without regard to the difference that may exist between the rate to Minneapolis and the rate to Chicago.

Q. In the New Ulm case, suppose instead of sending that to Minneapolis you would deliver it to the Chicago & Northwestern at New Ulm or near there, what would you allow the Chicago & Northwestern road, 7 or 7½ ?

A. Well, on business from New Ulm, you see, we have to haul it by Minneapolis because we are competing there and they would not take it from us there.

Q. The Chicago & Northwestern would not take it from you?

A. Not New Ulm proper business; they will take business west of New Ulm *via* New Ulm, but on New Ulm business we have to find another outlet because they would not permit us to compete there against themselves; in other words, they would not say, "Mr. Tittemore, your rate is 16½, we will haul that to Chicago for 7½ and give you 9 for switching it over from your tracks to ours."

Q. But take the traffic that comes from New Ulm and beyond New Ulm, you could at New Ulm deliver it to the Chicago & Northwestern?

A. Yes.

Q. On this through rate?

A. Yes, from west of there.

Q. Now, you say—I don't know what you call it, the arbitrary we called it before—would be 7 from there?

A. Yes, the difference.

Q. That is, you would pay that road 7 cents or 7½?

A. No, 7½.

Q. You would pay it 7½?

A. Yes.

Q. That is, under that arrangement you would have to sacrifice one-half cent of the local?

A. One-half cent.

Q. One-half cent per hundred of the local rate to New Ulm?

A. Yes.

Q. Why would you pay the Chicago & Northwestern 7½ when the arbitrary is 7 cents from New Ulm?

A. They don't publish anything that we could use like that, they simply tell us that that will be—I want to be perfectly plain about it—there is no arbitrary of 7 cents that we can use, the basis is 7 cents above the rate to Minneapolis, but they insist upon 7½ as their proportion of the rate. The billing would be right through to Chicago. The way-bill would read, for instance, from Boyd to Chicago *via* New Ulm, as it would be in the case of the Eagle Roller Mill Company, stop at New Ulm for milling. Or, under another rule, it might be billed from Boyd right to New Ulm at the full Chicago rate, that is, the Minneapolis rate plus 7 cents, which would make 16½ cents, and our agent collect all of the money at New Ulm. When the Eagle Roller Mill Company then brought his shipping bills in for an equal amount of tonnage he would ship it to Chicago over the Northwestern road free—the word "free" would appear on the billing—and the Northwestern road would bill on our auditor for 7½ cents per hundred pounds and we would send them a draft.

Q. Why is the basis 7 cents at New Ulm and 7½ in Minneapolis?

A. That has come from the competition between Chicago and Minneapolis and the roads leading to Chicago and to Minneapolis. The Minneapolis & St. Louis road has always fought to keep its Minneapolis market, because we have no direct line to Chicago. The Chicago & Northwestern road has apparently always fought to get the long haul on the business to Chicago from that district rather than give it to the other roads to Minneapolis on a short haul and then lose its tonnage to some other road like the Burlington or the Milwaukee, they want to keep all of the money to themselves, and for that reason, where they are strong enough to do it, they narrow up that difference so as to make a difference in favor of Chicago and as against Minneapolis. That has been my experience and that is the way this question has worked out. That is what changes this difference, Mr. Durment, makes the difference less as you get down south where we have less influence.

Q. Then you will, as I understand it, at New Ulm, for instance, make a through rate to Chicago upon the basis of 7 cents plus the local to New Ulm?

A. No, plus the local to Minneapolis. Now, you see that makes it quite plain.

Q. That is what I want to know.

A. Now, what is the local to New Ulm? Let us figure that. You see now we have been using New Ulm *via* Minneapolis; now you have got to take Boyd or some place west of New Ulm.

Q. All right.

A. What is the distance from Boyd to New Ulm, for instance? Do you want the old tariff or the new?

Q. The old tariff.

A. The local rate, for instance, from Boyd to New Ulm, under the old tariff, would be 13 cents per hundred pounds, the local rate on wheat and flour. The local rate under the old tariff from Boyd to Minneapolis would be 9½ cents per hun-

dred pounds; and the through rate would be made up by adding seven cents to the rate to Minneapolis, which would be 16½.

Mr. BUTLER: The through rate to Chicago?

WITNESS: The through rate to Chicago; rather than by adding 7 cents to the New Ulm local, which would make a through rate of 20 cents per hundred pounds.

Q. What would be the rate per hundred pounds of wheat, carload lots, under the old tariff, from Boyd to Minneapolis, as a local shipment, and not through to Chicago?

A. 9½ cents per hundred pounds.

Q. And from Boyd to New Ulm would be 13 cents per hundred?

A. 13 cents per hundred.

Q. And how far away is New Ulm from Minneapolis? that is, how much longer haul from Boyd to Minneapolis than from Boyd to New Ulm?

A. Boyd to New Ulm would be 102 miles and take a 105-mile rate. From Boyd to Minneapolis would be 152 miles but it takes a commodity rate not fixed on distance of 9½ cents per hundred pounds.

Q. That is to say, under the old rate, local hauls not interstate, a car of wheat from Boyd to New Ulm, a distance of 105 miles, would pay 13 cents a hundred pounds, yet it would be hauled from Boyd to Minneapolis, a distance of 152 miles, for 9½ cents per hundred pounds?

A. Yes, sir, local shipments.

Q. On the commodity rate as prescribed by the commodity-rate act, what would be the local from Boyd to New Ulm on a carload of wheat per hundred pounds and what the local per hundred pounds to Minneapolis, and what the through rate from Boyd to Chicago, as you would make it in consequence of the act?

A. By Minneapolis?

Q. Yes, by Minneapolis.

A. Your rate from Boyd to New Ulm under the commodity statute would be, as I figure it, 7.9 cents per hundred.

Q. Now, the charge under the commodity-rate act on the local from Boyd to Minneapolis.

A. I figure that, under the new act, to be 8.8 cents.

Q. How would you make the through rate which you say you would have to make, in consequence of that act, on a carload of wheat from Boyd to Chicago?

A. I would add 7½ cents and make the through rate 16.3, and it might route either *via* Minneapolis or *via* New Ulm according to the convenience of the shipper or the mill.

Mr. BUTLER: The figures on the new through rate would be 8.8 plus 7.5?

WITNESS: Yes.

Q. Then that would make 16.3 for your through—?

A. Yes, through to Chicago.

Q. You would not, then, make any through rate from Boyd to Chicago over the Northwestern by adding the local from Boyd to New Ulm to the 7 cents differential?

A. To the 7, no.

Q. Why not?

A. Because that is not the basis and would disturb the relationship that we have fixed.

Q. Then how does this 7 cents that you speak of enter into any of these matters?

A. I showed you, I thought, how it would enter into a shipment originating at New Ulm and going to Chicago.

Q. Well, you would make your through rate, then, from New Ulm, based on 7 cents above the rate to Minneapolis rather than 7½?

A. That does not involve the 7½ cents situation west of there necessarily, Mr. Durment.

Q. Then, as I understand it, so far as making a through

rate is concerned, everything starts from Minneapolis, your through rate to Chicago?

A. Bases upon Minneapolis.

Q. You take the local rate from the initial point of shipment to Minneapolis and then you add 7½ if it comes from a certain territory, 7 if it comes from another, or, if it comes from some other territory, a certain other figure?

A. Yes.

Q. That is the point.

A. Yes, that is the point.

Q. Now, will you explain how it is that with the commodity-rate act in force a man at Boyd who wanted to ship a carload of wheat to Chicago by way of Minneapolis could use that act to get a less rate over your road to Chicago than the 16½ cents?

A. Let me see now if I understand the question. You want to know if I can figure out under the commodity act how a man could defeat the through-rate proposition.

Q. Well, I have understood your position to be that you necessarily had to reduce your through rates to Chicago by the same amount that the locals between the point of shipment to Minneapolis were reduced by the commodity-rate act, and that one reason why you had to do that was that otherwise the shipper could ship from Boyd, say, to Minneapolis, on the local and there re-ship to Chicago and get it from Boyd to Chicago for less than your through rate of 16½?

A. I don't see how he could do it. You misunderstood me. You misunderstood me there, Mr. Durment. That would not be possible. You see he would be confronted with a ten-cent rate from Minneapolis to Chicago. You misunderstood me, because I didn't mean that.

Q. Well, then we come back to the old question which we have had up before. Then how would the fact that the law compels you to reduce the local between Boyd and Minneapolis

force you to reduce your through rate from Boyd to Chicago?

A. Well, we hold it to be impossible, we believe that it is impossible, under competitive conditions, to change the rate to Minneapolis and not change it to Chicago. Of course, we are not the arbitrator in the case. The other roads would change the rate from junction-points and contiguous territory to Chicago; it would be impracticable and impossible for a manufacturing establishment on our road to do business except in one market if we fixed our rates so that they discriminated in favor of one market, and we would be doing an illegal act, in my judgment (and under advice) if we did not make the fair relation to other markets that had obtained for years, fixed by competition and arrangement with shippers and industries located on our line.

Q. Well, every other road in Minnesota would have to put in the same locals, or locals upon the same basis as you, wouldn't they, under that act?

A. Yes, and—

Q. Then if that were true, how could the fact that the locals had been changed possibly affect the through rate?

A. Well, their local rates from contiguous territory to Minneapolis might not be the same as ours but their through rate to Chicago would be on the basis of 7½ cents above our rate to Minneapolis even though it was lower than theirs.

Q. Well, that would still leave you on the same footing, wouldn't it?

A. Not as I figure it.

Q. But you have the short haul to Minneapolis, you say?

A. Yes.

Q. You can fix the price to Minneapolis under competitive conditions?

A. We can fix the rate to Minneapolis. Well, now, you are talking about wheat?

Q. Yes.

A. We could not fix it on corn and oats.

Q. Say about wheat, then; we will talk about wheat at this time. And the other roads have to make the same rate to Minneapolis that you have made?

A. Not necessarily.

Q. Because you have the short haul?

A. Not necessarily from a station just three miles distant.

Q. Oh, well, but substantially throughout your territory that is true?

A. No.

Q. You said the other day that you had the short haul and they could not work against you, force you into a hole in Minnesota by competitive methods, for that reason.

A. I was testifying in that case with regard to the merchandise rates, and the conditions are altogether different. I said because of the short mileage we did not permit the new order of the Commission to interfere very much with our interstate rates.

Q. Well, isn't it a maxim of the railroads that the short mileage fixes the maximum rate in competitive territory?

A. The least rate.

Q. Well, no, the maximum rate fixes the rate, the short mileage in competitive territory fixes the rate, doesn't it?

A. Why, always, of course, particularly where the law fixes the rate on that mileage.

Q. No, but where the law does not.

A. No, we don't pay any attention to it.

Q. Oh! Then competition hasn't anything to do with rates of that sort?

A. Competition has a great deal to do with it, but it is not a rule of our road, for instance, or not a rule of railroads, that the short mileage always makes the rate.

Q. That is, in competitive territory it does, doesn't it?

A. If you are running only to one point, yes; but supposing

that we have the short mileage to Minneapolis and the Northwestern road don't have any mileage from that same point to Minneapolis, they are going to make their rate upon a competing basis of markets and not of rails, of markets and not of distances, so that they will make their rate from that point, whatever it may be to Chicago, upon a basis that will protect their interests against our short mileage.

Q. Now, let us talk about the same thing for a minute. In Minnesota as to Minneapolis, your line in most of the territory is a short haul, isn't it?

A. I think that is true.

Q. As to wheat, at any rate?

A. Well, I think the mileage is just the same on everything.

Q. Well, I didn't know about that. In some territory you said there was no wheat—

A. I know what you meant.

Q. Well, I meant just what I said, so far as that is concerned, but then that doesn't cut any figure here—

A. Well, our mileage usually from junction-points to Minneapolis is the short mileage, I think Mr. Durment.

Q. And so far as business, then, in your territory from Minnesota into Minneapolis is concerned, your road would fix the rate, wouldn't it, as a rule?

A. Yes.

Q. That means, doesn't it, that ordinarily the rates on the other lines would be substantially the same from competitive points to Minneapolis as your rates?

A. I believe they meet our rates in most cases, but in some cases they do not.

Q. But I say as a rule that would be the case?

A. As a rule I think they would.

Q. Now, under the commodity-rate act they could not make any better rates from competitive points to Minneapolis than your road, could they?

A. I imagine not.

Q. And most of them would have to make a different rate, wouldn't they, and larger?

A. Oh, no, not necessarily.

Q. Then one of the reasons, the competitive reason, why you would have to reduce the through rate is that these other roads, in your opinion, although they had to reduce their local rates to the same extent, would make a corresponding reduction in the through rate?

A. To Chicago or Peoria?

Q. Yes, from Minneapolis to Chicago or Peoria or from other points to those places.

A. From other points. Not necessarily from Minneapolis, but from other points.

Q. Why don't they do it now, why don't they reduce their rates, their through rates?

A. They publish the same through rates that we do.

Q. They publish the same through rates that you do?

A. Yes, if they meet our competition to a distinctive market. They may not make the rates to Minneapolis the same as they make to Chicago, nor upon the same basis. I don't think I understand your question, Mr. Durment, but they do make the same rates,—*can* make the same rates,—is better, to all points, and they do make the same through rates to Chicago.

Q. That is the point we are talking about.

A. Yes.

Q. They do make the same through rates to Chicago?

A. I think they do from all competing territory.

Q. In other words, you make the through rates from your territory to Chicago?

A. I don't from Albert Lea, where the rate is 5.5 cents per hundred pounds above the rate to Minneapolis.

Q. No, but from other places?

A. Well, from New Ulm I don't, because the rate is 7 cents

above the rate to Minneapolis. I may fix the rate to Minneapolis and in that way fix the through rate, but I don't fix the basis of 7 cents,—I would have fixed it 5 cents in favor of Minneapolis if I had my way.

Mr. BUTLER: Instead of 7 in favor of Chicago?

WITNESS: Yes. And competition fixes that, Mr. Durment.

Q. As nearly as I can make out, Mr. Tittemore, the rates from Minneapolis & St. Louis territory are all made with relation to the Chicago rates, the through rates?

Mr. BUTLER: You mean on some certain commodities?

Mr. DURMENT: Well, I am speaking now of wheat.

Q. And that the Chicago rate controls; is that right?

A. The Chicago rate controls where the road is strong enough to make it control.

Q. Well, but in your case?

A. Well, in our case to New Ulm, you see that is pointed out plainly. Albert Lea, where the Milwaukee road is, that is pointed out again plainly, but as we go west and north and get away from those roads you will notice that our basis is 7.5 cents. We get away from that compulsory competition, if you want to call it that.

Q. Yes, but the proposition I have in mind is this, that in making up a rate-sheet fixing the tariffs in Minnesota for transportation on your lines—this is for wheat, now, and flour—whether the transportation between points local in the state or from the state on through to Chicago your rate is always made up with reference to a certain relation between the Chicago rate and the Minneapolis rate, is it not?

A. Yes, sir.

Q. And that the Chicago rate (that is, the rate from Minneapolis to Chicago, or the part which is included in the through rate for that) is a figure which you are compelled to take because of the competition of the other lines?

A. I don't get your question.

Mr. BUTLER: Don't you mean a comparison between the Chicago rate and the Minneapolis rate?

Mr. DURMENT: No.

Q. What I mean is this: Did you make up your through rate, as you have already testified, by taking the local to Minneapolis and adding 7½ to it?

A. Yes.

Q. Now, that 7½ which is included in the through rate to cover the haul from Minneapolis to Chicago, is fixed by competition and as the result of competition?

A. And adjustment largely as against the Head of the Lakes.

Q. And you can't control it, your road can't?

A. No.

Q. The 7½ which goes into the through rate to Chicago for the haul from Minneapolis to Chicago is fixed by competition and your road can't control it?

A. We can't make that.

Q. You can't make that?

A. No.

Q. Now, from all your points west of Minneapolis, or most all of them, you make a through rate to Chicago?

A. Yes.

Q. And you make that rate at such figure as will enable you to compete with other roads hauling from the same territory, do you not?

A. Well, the rate from those points west to Minneapolis are fixed by the State.

Q. Well, not now. They would be under the commodity act, but I am speaking now under the old system.

A. Well, but the old rates are fixed by the Railroad & Warehouse Commission just the same.

Q. Of the State?

A. Of the State, oh, yes; they were, and we are using

those. You can't vary those rates unless you apply to the State Commission for variance.

Q. Then these rates were fixed by the State before?

A. They were.

Q. And they were fixed on all other roads in the state?

A. Yes, in Minnesota.

Q. Then there was no way for the other roads in the state to make any reduction in the local rates that would affect you by way of competition?

A. No, they made the through rate.

Q. And they could make it without reference to Minneapolis, is that right?

A. They could; they would have that string to their bow that we wouldn't have, because we couldn't make a rate independently,—to Chicago, if you will.

Q. Then it gets down to this, does it not, that your through rates from points in Minnesota to Chicago are fixed as the result of competition or to meet competition and are not fixed with reference to the cost of the service nor the length of the haul?

A. There is a lot in that; I think that is largely true. I think competition does more to fix our rates than any other influence.

Q. And in fixing the rates you don't figure out the cost of the service, nor the distance where it necessarily meets competition, do you?

A. We figure it out but we can't always make it.

Q. I mean you don't make your rates with that in view.

A. Yes, we make our rates with that in view, but competition won't let us get it. That is, we don't ignore the—

Q. That is, you would always charge enough to pay the cost of the service and a profit if competition would let you?

A. Yes.

Q. But in most cases, in wheat, competition does not let

you do it, I understand, from Minnesota.

A. Well, competition affects all of our rates that way and affects our wheat rates, but I don't mean to say that the wheat rate would not yield more profit, for instance, than some other traffic.

Q. Yes, but can you say that the wheat rate yields any profit under present conditions of traffic on your road?

A. I couldn't say so. I couldn't segregate one item of traffic, any more than a grocer could tell what it cost to sell one pound of prunes out of a pail of prunes that was in his store during a certain day.

Q. And you would have to make the same rate whether it brought you a profit or not, wouldn't you, under existing conditions?

A. If we got any traffic and protected the industries on our road.

Q. Well, this comes to another proposition, we will take up the industries on your road. I think you were to furnish us a list showing the points at which there were industries which you had agreed to protect.

A. "Agreed to protect"—I didn't say that. Who have settled there, based upon this arrangement of rates 7½ above the rates to Minneapolis. There is no contract to protect them, I could change the rate tomorrow, say, if it was legal to do it, and have these people in on my neck immediately. There is no written contract. There is the contract or the arrangement, just as I have expressed it, as between the Fairfax mill and our road, and that exists at a great many other places. We have not got all the information you asked for, we are getting it. We have the map.

Q. You haven't got it ready yet?

A. Not all of it. Here is the map.

Witness produces map "Complainant's Exhibit 20–Tittemore."

Q. You have called attention to Fairfax and one or two other places where you said you were under obligations to protect them (that is, your patrons,) against being compelled to pay a through rate to Chicago on wheat or flour which would be greater than the local rate into Minneapolis plus 7½ cents a hundred pounds. Now, at how many points are you under such obligations to your patrons? and name them.

A. Well, we are under obligations to every industry west of Gaylord, at least, to LeBeau, South Dakota, and Leola, whether it be an elevator or whether it be a mill, no matter what the industry is. That is the basis on which they located, that is the arrangement we make with them. But this map before you referred particularly to mills that are located on our road east of Watertown. I think there is a mill at Aberdeen, but east of Watertown.

Q. Now, will you take this map, Exhibit 20, and call off the stations where there are industries to which you are under such obligations?

A. Well, you can take all of the stations.

Q. Call them off.

A. Take Winthrop, Fairfax, Franklin, Morton, Bellview, Echo, Clarkfield, Boyd, Madison, Revillo, South Dakota, and Watertown.

Q. What are the industries there as to which you are under obligations, elevators or mills?

A. Mills and grain elevators, both.

Q. How many mills? I mean mills at more than one place.

A. Oh, there are mills, I think, at every one of the points named.

Q. And elevators at most of them?

A. And elevators.

Q. You say they established themselves there upon that understanding. Was that because you made some promise to them that the rates should not be higher to Chicago than the

local to Minneapolis plus 7½ cents per hundred pounds, or simply because that was the rate when they did establish themselves there?

A. Well, I think in every case, at least so far as I am concerned since I went with the road, no mill or industry has located in that section of the country without first coming to me and asking me if that basis was in on our road and would obtain for some time to come; and we have usually said yes we knew of no reason why it should change but there might be a reason why it should be changed that we could not control, but if we could control it we would hold that basis because it appeared to be fair and acceptable.

Q. Then there is no contract which your road would violate as between it and the persons who established industries there if it should make a through rate from those points to Chicago which would be higher than the local to Minneapolis plus 7½ cents per hundred pounds for wheat?

A. There is no contract but we would break faith with them badly if we did that.

Q. And that is one of the strong reasons why if you were compelled to reduce your local rates in Minnesota under the commodity act you would also reduce your through rates to Chicago, is it not?

A. Yes. I think, Mr. Hillman, you had better read that question to me. (The Reporter here read the last question.) Yes, to give them the advantage of the two markets, Minneapolis and Chicago, in competition with other lines in that district.

Q. It would not be true in case of any industry located at any of these points you have spoken of that they could ship to Minneapolis at the local provided under the commodity-rate act and from there to Chicago on the 10-cent rate from Minneapolis to Chicago and get a less rate than the through rate which obtained during the period covered by Exhibit 14?

A. I don't figure they could.

Mr. BUTLER: I will offer Exhibit 20 in evidence now.

Q. Under the rates which existed during the period covered by Exhibit 14 you said the local on a carload of wheat from Boyd to New Ulm would be 13 cents per hundred weight, a distance of 102 miles, and that the local on that same carload of wheat from Boyd to Minneapolis, a distance of 152 miles, would be 9½ cents per hundred weight. Why would the local from Boyd to New Ulm be 3½ cents a hundred greater than the local from Boyd to Minneapolis, which is fifty miles farther?

A. They are all state rates and fixed by the State; I don't know the reason why, but it seems to me that almost is a mistake.

Q. It would seem to me it ought to be a mistake. Those are the figures you gave.

A. They are the figures I took from the tariff and fixed by the State. I thought I was right, I will look it up again. They are the rates that were filed with the Commission in accordance with the law and accepted and we cannot change without their sanction.

Q. That is true, but the roads made them and the Railroad & Warehouse Commission had nothing to do with fixing them, had it?

A. I think so in the beginning, they certainly fixed the maximum rate that the road could charge. Your rate on wheat and flour from Boyd to Minneapolis under the old tariff is 9½ cents per hundred pounds. Now, there is no rate on wheat reading from Boyd to New Ulm, so we take the distance. The distance tariff rates are always higher than the terminal commodity rates, and under the distance tariff rate I find there is no rate on wheat, distinctively, but a rate on grain and flour and feed and mill-stuffs, oil-cake and oil-meal, which would be, from Boyd to New Ulm, on the basis of 105 miles, 13 cents per hundred pounds. There never was such a thing as a distance

tariff rate, a specific commodity rate, between terminals being the same or based on distance.

Q. At how many points from New Ulm west on your road is the local tariff or was the local tariff to New Ulm greater than the local tariff to Minneapolis from the same points?

A. I imagine it would be in every case, because the distance tariff is always higher.

Q. In every case from New Ulm west, you think?

A. Yes, nobody would use the wheat rate from New Ulm.

Mr. BUTLER: Is New Ulm a primary market for wheat?

WITNESS: No.

Q. Are there any other points on your road than those you have referred to from Winthrop west where you are under similar obligations to protect them on the Chicago rate?

A. Every grain industry on our railroad and every mill on our railroad in Minnesota has the same arrangement with our Company and located upon the understanding as to the relationship between the rates to Minneapolis and to Chicago; in other words, they insist upon having the two markets, they won't let us give them but one market, and we have promised that we shall open up every market and every avenue to them that we can upon that basis. That would apply to our main-line mills, for instance.

Q. You have said that on this line from Winthrop, west there was not a point where there was one of these industries that, putting in the rates the commodity act calls for, would enable it to ship on the local to Minneapolis and then from Minneapolis to Chicago for less than the through rate to Chicago, which was in force during the period covered by Exhibit 14. Now, are there any points at other places on your lines in Minnesota where, if you should put in the locals called for by the commodity-rate act, it would enable these industries, or any industries, to ship to Minneapolis or other points on your road at the local and from there to Chicago for less than the through

rates which were in force from those points to Chicago over your line during the period covered by this Exhibit 14?

Mr. BUTLER: You mean the local from Minneapolis to Chicago, too, I suppose?

Mr. DURMENT: Yes.

A. Well, an industry could do that.

Q. Now, I say, are there any of them on your lines where the industries could use the two locals to make an interstate haul at a less rate than the through rate from that point to Chicago which was in force during the period covered by Exhibit 14?

A. I do not believe there was on wheat. I could not find one, I can't locate one. Just a minute, Mr. Durment, I may change that.

Q. Wheat or flour.

A. Not under the conditions prevailing for the period covered by Scott's Exhibit 14. I think not, I can't find one or call to mind one. Of course, you are speaking now of wheat and flour an industry handling wheat and flour, but that would not apply to the same industry if it were buying corn or oats, which they do.

Q. I confined this question to the matter of wheat and flour.

A. I wanted to have you understand that I meant to testify that the basis of rates applies to coarse grain as well as to wheat.

Q. Yes, and I want to learn something about that a little later, but I thought we would finish with the wheat proposition first, and perhaps coal, because we have gone into coal some already. Practically all of the traffic in wheat which passes over your lines, in Minnesota, at least, is in carload lots, is it not?

A. Yes.

Q. Not broken shipments?

A. Carload lots.

Q. That is true, also, as to coal, is it not?

A. Yes.

Q. You said yesterday in speaking of the Duluth coal, that the industries along your line could not use Duluth coal. Is that because the character of the coal was such that it would not do their work, or because the price of it was such that they could not afford to?

A. Both, and then because they can't get it.

Q. Because they can't get it? You don't mean, do you, that if they had the Duluth coal at their place they couldn't use it with the same results?

A. No, I didn't mean to say that, because they tell me that it would close up some of the industries on our road if I compelled them to buy their coal in Duluth.

Q. Yes, that may be.

A. Because of their competition with industries on other lines that have these other fields open to them.

Q. Yes, but what I want to get at is just what you mean. You don't mean to say that they couldn't use the Duluth coal if it was put into their place at the same price as that coal and do their work, do you?

A. Some of them say they couldn't, their grates are not fit for it, and it burns too hot and it burns too cold.

Q. Then, if they couldn't use the Duluth coal if they had it, then there would be no competition between the Duluth coal and the other coal, would there?

A. There might not be in some instances.

Q. Then you wouldn't say, would you, that there was competition between the Duluth coal which they couldn't use if they had it at the same price or a less price and the other coal?

A. Of course, there would be no competition between a thing they couldn't use—

Q. And if they could use it if they had it, that is, if it were fit for their work if they had it, and if they could get it at the same price they got the other, there would not be any active competition between the two coals, would there?

A. If the two coals were exactly alike and the price and rate the same, of course there would be only that competition that would come from natural preference.

Q. Well, now, then, that is what I had in mind.

A. But that is not the practical case.

Q. If they can use the Duluth coal if they had it at the same price, but they can't get it at the same price, why have you got to keep your rates on the soft coal from Illinois down to a point where they can buy it for less than they can buy the Duluth coal?

A. I never in my experience have been able to make a higher rate on a cheaper commodity, whether it be an analogous commodity or something else.

Q. You may not have been, but why not?

A. Because—I can't tell.

Q. You can't tell?

A. No, sir. I never have been able to figure it out to my own satisfaction.

Q. Then, assuming that it would cost the people to get the Duluth coal up along the line of your road 25 cents a ton more than it would cost them to get the coal from the Peoria field a ton, do you mean to say you could not add 10 cents a ton to the price for hauling the Peoria coal into that field and yet enable the coal-seller to compete with Duluth coal?

A. Well, I might if the other roads would put their rates up from Manitowoc and LaSalle and Gladstone and other points, but—

Q. Well, assume, just for the purpose of this question, that these other points are not in the market and that it is a question between Duluth coal and the Peoria coal. The Duluth coal is 25 cents a ton more to the man along your line of railway than the Peoria coal is that you put in to him that is laid down at his place of business on your line, wouldn't you be able to add 10 cents a ton to the cost of hauling the Peoria coal and

still compete with the Duluth coal?

A. I think not.

Q. Why not?

A. I don't think it can be figured down that fine. In the first place, we can't get the cars to bring the coal to our industries on our road from Duluth, we have no control over the equipment. I can't answer that question because it is impossible and impracticable and I don't have any factors in my mind from which I can make a deduction or make a figure.

Q. Let us talk about it a little while then and find out. We will assume that Duluth coal is brought from Duluth into your field, to Minneapolis, and thence over your road or into your field by the other roads that would now carry it in there, and that it would cost the people along the lines of your railroad say $4.25 a ton laid down to them; now, suppose that the coal which you haul from Peoria to those same places would be laid down to them there at $4 a ton, do you mean to say that if it was a losing haul for you and you raised the price of carriage 10 cents a ton, so it would cost them $4.10 laid down there, that it could not compete with the Duluth coal?

A. There is a variation of at least 75 cents per ton of difference in the value as between four or five mines on our road in Illinois, and if I were to make the rate upon the basis that you say, I might exactly hit one man's case and discriminate against every other man in the same kind of business. One man might be shipping for a mill, to a milling industry, another man might be shipping to a brick industry, another might be shipping to a shirt factory, and the value of the coal, both as to quality and as to price, might vary in every single instance, so that the railroads have met, conferred, wrestled and finally determined upon a relation of those coal rates that at present seems to be fair to the carriers, taking it all into consideration, and acceptable to the shippers, but to our road, competition has forced that rate down to a basis which I consider non-compen-

satory, *under our conditions*, the conditions under which we are operating. Some other road might make a profit out of a rate that we would lose money at.

Q. Well, there is no particular difference in the cost of hauling or handling these different qualities of coal, is there?

A. No, if you—

Mr. BUTLER: Merely based on quality you mean?

Mr. DURMENT: Yes, based on quality.

A. No.

Q. And yet you make a different rate, a different freight rate on them.

A. We make a different freight rate on—?

Q. Different qualities of soft coal, do you?

A. No, we make one rate on hard coal and another on soft coal. We do occasionally make a different rate on screenings—which is almost valueless, sometimes worth but thirty cents a ton in Illinois—and we load it into open cars and ship it to the industries at a cheaper rate because if we did not do that it would be thrown out on the dump. The coal-mine if it couldn't sell that for thirty cents a ton, would close up and not produce any lump coal, so to get the lump coal we oftentimes haul these screenings away at a cheaper rate. But there are only two rates really on coal, that is hard coal and soft coal.

Q. Then you don't make any difference in the price of freight or the rate for hauling soft coal because of the difference in quality of the coal?

A. Not in the soft coal, there is no difference in soft coal.

Q. Then I can't see why it would make any difference to your different customers who use the different grades of coal whether you raised it 10 cents in the case I put a few minutes ago or didn't.

A. I meant to have said that the rate was an average rate fitting an average condition. That is what I meant to have said. The rate that we have from the different Illinois districts—and

by the way, a $1.40 is not the only rate from Illinois to Minneapolis, it might be $1.90 from other districts than Peoria and still the $1.90 rate squeeze out the $1.40 coal, that has all been fixed on arbitraries in Illinois and with relation to the different fields, just as our flour and grain rates are fixed up here.

Q. That is to say, you haven't anything to say about fixing the coal rate that you will get in your territory, is that it?

A. No, we do not,—competition fixes that rate, fixes all rates.

Q. You have got to take what you can get?

A. Or go out of the business.

Q. Or go out of the business, and you don't fix those rates with reference to the cost of doing the service or the length of the haul, or the price or quality of the commodity, do you?

A. Well, we take that into consideration. Competition really fixes the rate.

Q. I say you don't fix it based upon these other points.

A. We can't.

Q. You take what they will give you or nothing, that is the proposition?

A. If we don't put in rates that will compete we go without the tonnage.

Q. What other roads haul coal into Minnesota from the mines which your Company hauls coal into Minnesota from? the mines in Illinois or Iowa, I mean.

A. Well, I imagine they all do, but I could not specifically state whether they all do from all fields or just what fields they do haul from. A great many of the roads own their own mines and are jealous of those mines and do not let all other mines come in competition with their coal in certain districts, and there are conditions that obtain between the coal operators and the railroad, that is, these other railroads, that I know nothing of, so that I would have to consult the published tariffs to find out.

Q. Understand that I am not asking what other roads haul from the same fields in Illinois and Iowa, but what other roads haul coal into Minnesota from the same mines which your road hauls it into Minnesota from.

A. As I say, I would have to consult their tariffs to be certain about that.

Q. Are there any?

A. Oh, I should think so. I should think the Northwestern, the Rock Island, the Milwaukee and Great Western.

Q. You take your coal from the Illinois field over the Illinois Central or the Iowa Central?

A. The $1.40 rate that we have been talking about applies from Peoria and mines on the Iowa Central road in that locality up as far, say, as Farmington, Illinois. I think Farmington, Illinois, is the last mine on our road north, north of Peoria on the Iowa Central that is competitive with the Burlington railroad.

Q. Your $1.40 coal—that is, that you get $1.40 for hauling into Minneapolis—then comes over the Iowa Central?

A. Yes.

Q. To your road?

A. I think that is the only way that tariff reads.

Q. Do you get any coal from the same mines or the same territory from other roads which you haul into Minnesota?

A. I think we do from the mines on the Illinois Central, possibly from the mines on the Burlington. I would have to consult my tariffs to know exactly.

Q. Well, I would like to know that, and I would like to know what the rate is into Minneapolis in each case of those two roads and what portion of it your road gets.

A. Well, the Illinois Central would be about the only road, you see, Mr. Durment, because all of the other roads have their own lines into Minneapolis and would not let us participate in the haul. I might say that the Illinois Central company's

mines would be about the only Illinois mines that would contribute to the Minneapolis St. Louis coal traffic. We will get these tariffs, but if we find out there are other tariffs we will give them to you also.

Q. And the proportion of the division of the rate?

A. Yes. You asked the other day for that Illinois Central division sheet, and I brought it here to give it to you and am ready now to give it to you.

Q. Would that show it?

A. This would show it but it won't show the rates. I have in my hand M. & St. L. and Iowa Central G. F. O. 1-A, Interstate Commerce Commission on No. 1784, being a freight tariff on coal and coke in carloads from Chicago and Peoria, Milwaukee and Duluth and from Keithsburg, Illinois, to stations in Iowa, Minnesota, and South Dakota. This is not a complete tariff, I will get one.

Q. Then practically all the coal you haul from Illinois outside of that which you receive from the Iowa Central you receive from the Illinois Central?

A. Yes, and I think that the Iowa Central contributes most of the coal traffic because, as a matter of fact, the other roads don't want to haul the traffic, don't want to give it to us, don't consider it is remunerative, and won't let us get a hold of their cars.

Q. Can the Illinois Central, or has it, any arrangement by which it can ship this coal over its road into your territory over other roads?

A. It would not have into St. Paul and Minneapolis, but it might have into some of the other territory, I can't say. The arrangement between our road and the Illinois Central with relation to St. Paul and Minneapolis traffic is considered to be exclusive, because we contribute to each other's support in both ways, but once in a while they do put in rates with our competitors into Minnesota because of some exchange of traffic at some

other point which makes it obligatory, as it were, upon them to do it.

Q. Well, the question that really disturbs my mind is this: Can the Illinois Central make arrangements with other roads running into Minneapolis and St. Paul to carry their coal for as small a price as you carry it for?

A. Oh, I think they could if they made an exclusive arrangement and gave them all their other traffic.

Q. You think they could?

A. I think they could.

Q. And they have such an arrangement with you, have they?

A. Such an exclusive arrangement between St. Paul and Minneapolis, yes.

Q. And can they get the other roads to carry their coal into these other points in your field that compete with you at the same prices you get from them?

A. Oh, those divisions are a matter of knowledge usually only to the two carriers interested, I would not know what the division between the Illinois Central and the Milwaukee company would be, for instance.

Mr. BUTLER: You would know or would not know?

WITNESS: I would not know—no way of finding out. We assume that they would be fair, as fair with us as they would with others.

Q. But the Illinois coal which you haul in here would have other ways of getting into Minnesota where you take it if your road didn't haul it?

A. That is, coal from off the Iowa Central could get into Minnesota if the M. & St. L. didn't haul it?

Q. Yes, to the points where you take it. That is, you take the coal off the Iowa Central and distribute it in Minnesota, say.

A. Yes.

Q. If your road didn't take it, are there roads over which it could get into the state?

A. Yes, but it couldn't get into our exclusive local points.

Q. Then you are in a position as to the territory which you control to make your own rate, aren't you, for that coal, from Albert Lea on?

A. I don't think so.

Q. Why not?

A. I don't think we control any territory.

Q. Oh. Then you have not any points to speak of that are exclusively the Minneapolis & St. Louis points?

A. I don't consider them so because if they are located on the rails that the M. & St. L. own, you can usually hear the whistle of a locomotive just a few miles away on some other road.

Q. In other words, you have practically got to meet competition at every point of your field?

A. That is true.

Q. And that is true not only on wheat and coal, but on every other thing, isn't it?

A. I think it applies to everything, all the traffic of the M. & St. L. road.

Q. Is there any point on the lines of the Minneapolis & St. Louis Railway Company, either in Minnesota, Iowa or Dakota, from which a shipper, if the local rates in Minnesota were the rates fixed by the commodity-rate act, could ship to Chicago on the locals at a less rate than the through rate from that point to Chicago during the period covered by Exhibit 14?

Mr. BUTLER: What commodity, Mr. Durment?

Mr. DURMENT: Wheat and flour.

A. I think not. I have testified to that once before, you remember. I cannot find such a point.

Q. I only covered Minnesota in my former question.

A. I can't find such a point and I don't think there is such a point.

Mr. BUTLER: That Hopkins matter you spoke of this morn-

ing—it does not apply to that, does it? or was that on the basis of the new rate?

Mr. DURMENT: That was on the basis of the new rate.

WITNESS: Mr. Durment has been speaking about points where there were industries.

Mr. BUTLER: Well, this question was not so limited.

Mr. DURMENT: No.

Mr. BUTLER: This last question. You spoke of Hopkins and some nearby points this morning, I think.

WITNESS: Well, I don't think it would, even from Hopkins, under the old rate.

Mr. DURMENT: And this question is directed to the old.

WITNESS: Yes, the old condition. I think not, Mr. Durment.

Mr. BUTLER: The condition at the time the table was made. That new tariff of 1907 made some low cut, didn't it, on the terminal rate?

Mr. DURMENT: About all that did was to reduce the terminal rate at Minneapolis on wheat and make it 12½ instead of 10, I believe.

WITNESS: Well, as a matter of fact, Hopkins, Minnesota, and St. Louis Park, would take a less rate than the through rate under the old regime.

Q. In case you should put in the new tariffs?

A. Well, under the old tariff they would. There is no change between the old and the new rate on wheat as between Hopkins and St. Louis Park and Minneapolis, both being on the basis of three cents plus ten, which would make a 13-cent rate as against a 15-cent rate obtaining there.

Q. But aside from those one or two places near Minneapolis, there are no others?

A. There are no others.

Q. Yesterday you said that if you should put in local rates as required by the commodity-rate act in Minnesota, it would require you to make a change in the through rate from Lake

Mills to Chicago, Lake Mills, in Iowa.

A. Did I say on wheat?

Q. I understood so.

A. I think I was testifying on coarse grain.

Q. Oh, that was coarse grain?

A. Yes.

Q. How would it be as to wheat?

A. Well, I can tell in a moment. Can I go ahead now and tell you about this in my own way?

Q. Except confine it to wheat. We will take up the coarse grain feature again. I want to clean up the wheat proposition.

A. I will confine it to wheat. Now, the rate under the Commissioners' old tariff—

Q. Well, under the old tariff, we don't know whether it is Commissioners' or not, you know, we haven't agreed on that.

A. Well, under the old tariff, from Albert Lea to Minneapolis would be 10 cents per hundred pounds. Now, the rate from Albert Lea to Chicago is based upon 5 cents above the rate to Minneapolis, which makes a rate from Albert Lea to Chicago of 15 cents per hundred pounds as against a 10-cent rate from Albert Lea to Minneapolis. The new rate from Albert Lea to Minneapolis is 7.9 cents per hundred pounds. 5 cents added to that makes the through rate 12.9 cents per hundred pounds. 12.9 cents per hundred pounds from 15 cents per hundred pounds makes 2.1 cents per hundred pounds reduction in the rate from Albert Lea to Chicago. The distance from Albert Lea to Lake Mills, Iowa, is nineteen miles. There are two small stations intermediate, called Twin Lakes, Minnesota, and Emmons, Iowa. Now, if the rate from Albert Lea to Chicago changes to 12.9, the rate from Lake Mills to Chicago, on wheat, will be 14.7, this 14.7 will be 12.9. We haul our Albert Lea stuff through Lake Mills and out *via* other Iowa junctions, we don't handle that around by Minneapolis. The rate of 14.7 and 12.9, that is to maintain a rate of 14.7 from Lake Mills and

12.9 from Albert Lea would make a difference of 1.8 cents per hundred pounds, and we would consider a difference of that amount from those stations as being discriminatory and we have figured the loss on that basis. We feel also that it would be impracticable to hold that rate higher than Albert Lea, as well as illegal because of the fourth section.

Q. What is the present rate from Albert Lea to Chicago?

A. 15 cents per hundred pounds.

Q. From Albert Lea to Chicago?

A. Yes, on wheat.

Q. What was the rate from Albert Lea to Chicago on wheat during the period covered by Exhibit 14?

A. 15 cents per hundred pounds.

Q. What was the rate from Lake Mills, Iowa, to Chicago, during the period covered by Exhibit 14?

A. I think it was 14.7.

Q. And it is the same now, isn't it?

A. It is the same now, but I wanted to say that under the peculiar instructions of the Interstate Commerce Commission we don't have complete tariffs any more, that is, our record don't show the intervals and we would have to go back to our files again to find out. It seems that one time this rate was 16 cents from Lake Mills on wheat while the rate from Albert Lea was 15 cents. That is the way it would appear, but there were changes which corrected that and made the rate from Lake Mills less than Albert Lea, but there is an interval that is not covered by this tariff and I want to make sure of that. The present rate would be 14.7 and I think was at that time.

Q. And would the wheat then be shipped from Lake Mills by way of Albert Lea to Chicago at that rate?

A. There would not be any wheat to be shipped from Lake Mills, but if there were any raised in Iowa to be shipped to Minneapolis it would be shipped there, but there is nothing there.

Q. Well, I mean to Chicago.

A. There wouldn't be any to Chicago because there is none marketed there.

Mr. BUTLER: No market of wheat at Lake Mills?

WITNESS: No market, none grown there.

Q. Then, as a matter of fact, the Lake Mills proposition would not be a discrimination on wheat?

A. Not on wheat, no; not if there is nothing there.

Adjourned until Monday morning, August 17th.

FEDERAL BUILDING. St. Paul, Minn., Monday, August 17, 1908, the hearing was resumed pursuant to adjournment, at 10 o'clock A. M.

(By agreement the hearing in the Northern Pacific case was continued until August 24th.)

JAMES N. TITTEMORE

recalled for further cross-examination, testified.

By Mr. DURMENT:

Q. In the case of wheat shipped through from points in Minnesota to Chicago under the milling-in-transit privilege, of course the wheat is unloaded at Minneapolis, or some other point, and then later reloaded and shipped to Chicago; that is, sometimes it is ground into flour first?

A. Yes; in the case of the wheat itself I am not certain that we have a milling-in-transit arrangement at Minneapolis, although we may have, I would have to consult our milling-in-transit circular. But milling-in-transit means the conversion of the wheat into flour, of course. But an equal tonnage is permitted to be loaded out, if loaded within a certain time as per the specified rule, and sometimes wheat goes, although I couldn't say for certain, unless I would look at our circular, whether wheat could go or not.

Q. Then the most of the wheat from Minnesota moving over your road on a through rate was not a continuous shipment from the initial point to final destination?

A. I should think not, where it was destined to Chicago; all wheat, of course, in Minnesota, is milled for transportation, most of it at least, beyond Minneapolis and St. Paul. Our milling-in-transit arrangement on wheat in M. & St L. G. F. O. No. 3260, in effect May, 1905, reads like this: "*Via* Chicago, Rock Island & Pacific Railway and Illinois Central Railroad, wheat may be way-billed from stations LeBeau and Leola, South Dakota"—that is our western terminal—"to Minnetonka Mills," (that is, stations LeBeau and Leola, South Dakota, to Minnetonka Mills, Minnesota,) "also Lafayette to Dunnell, Minnesota, all inclusive, may be way-billed to be milled at Minneapolis and product forwarded to Chicago, Illinois, or points on C. R. I. & P., Illinois Central, and C. I. & S. Railroad, as shown on pages 5 and 6 of tariff, or as amended; the current traffic rate will apply on wheat from shipping point to Chicago." Now, there is an indication mark before the word "current" which refers to a paragraph which says, "To secure advantage of the arrangement authorized hereby, the wheat must be consigned through to Chicago or Kankakee from originating point. The through rate to Chicago or Kankakee must be collected at Minneapolis and reconsignment of wheat at milling point or transfer of transit from the original owner or consignee of wheat will not be permitted, nor will transit created under this arrangement be accepted in payment of freight charges on wheat forwarded from Minneapolis." So wheat is excluded from the operation of the milling-in-transit at Minneapolis.

Mr. BUTLER: You mean wheat out of Minneapolis?

WITNESS: Wheat out of Minneapolis is excluded; that is, under that circular, the flour only can be shipped from Minneapolis.

Q. Now, you have said time and again, in the course of your cross-examination here, Mr. Tittemore, that during the period covered by Exhibit 14, wheat was shipped from Minneapolis to Chicago, under substantially that kind of an arrangement.

A. Well, it would not be under that circular. I have referred to the milling-in-transit circular several times.

Q. Well, now, don't you know yourself about that?

A. No, I could not change that rule, Mr. Durment.

Q. Now, let us try and talk about the same thing today, Mr. Tittemore. I am not asking you about the circular. Don't you yourself know whether or not wheat hauled over your road from Minnesota points through for Chicago, during the period covered by Exhibit 14, was permitted to be transferred or milled in Minneapolis, and then that wheat itself shipped to Chicago from Minneapolis?

A. I supposed that had been done in some cases, but I find it can't be done.

Q. That is, you find now under this particular schedule of rates as you construe it it couldn't be done?

A. The tariff reads so plain, Mr. Durment, that it couldn't be done possibly without an infraction of the federal law. I think there was a time when we could and did do that, but that time is passed when the traffic manager can by telephone change things, and I had that perhaps in mind. The Exhibit 14–Scott, is made upon the basis of that circular.

Q. How do you know?

A. I know, because I have consulted the figures. The figures are not killed, anyhow.

Q. When did you discover it?

A. I discovered it this morning after Mr. Willett had told me. However, I didn't know—

Q. Now, let us get a clear understanding. Then do you mean that your testimony during the past week on these mat-

ters is wrong and not entitled to consideration, that you didn't know what you were talking about?

A. No, sir, I do not. I think, if you will read my testimony over again, you will take a different view of it. I don't think I stated what you have said I stated.

Q. You were asked to produce here, and said you would do so, as I recall it, a statement showing the amount of wheat transported during the period covered by Exhibit 14 from your various junction points to Chicago; have you got that?

A. The auditor, Mr. Durment, furnishes us with a statement.

Q. May I see it, before it goes into the record?

A. Yes. (Producing paper).

Q. Did you make this up yourself?

A. No, the auditor.

Q. It does not show upon the face of it, whether it is wheat or what it is; do you know what it is?

A. Wheat and wheat products is what you asked for, and we gave the auditor the exact memorandum. It might be better for the auditor to present that; we didn't get it up, we wouldn't have any way of figuring it up. I haven't seen the statement before.

Q. I am not clear in my memory of it, but yet my recollection is that you were asked whether the rate of 7½ from Minneapolis to Chicago on wheat and its products was compensatory, and you said you thought it was.

A. That is, the division of the rate, 7½ cents; there is no rate.

Q. Well, let it be understood in the record that I am not anywhere trying to sneak into the record any testimony that there was an established rate from Minneapolis to Chicago.

A. No.

Q. I always mean that when I say that the 7½ cents which

is the portion of the through rate which the roads going in there got.

A. Yes. Well, I should think, under all the conditions, Mr. Durment, that that $1.50 a ton or 7½ cents proportional was compensatory; but so much depends upon where the freight originates, how much you get out of it before it gets into Minneapolis, the equipment, the question of what comes up in the cars, how heavy they are loaded out, and all that enters into it, so that it is difficult for me to state off-hand yes or no to that.

Q. But I say, could not all the shipments through, so far as they were from Minneapolis on an average of a 7½-cent rate which was paid, be practically upon the same basis; there wouldn't be much variance, would there?

A. No, and the aggregate tonnage argues something in favor of the compensatoriness of the rate, I should say; it is the tremendous tonnage that can be hauled in consolidated trains.

Q. And I presume that wheat and wheat products delivered in the same quantities to the road at Albert Lea could be profitably hauled from there to Chicago for less than they could be hauled from Minneapolis to Chicago by way of Albert Lea?

A. Well, that is something that depends. I wouldn't say that, because I don't know, but the length, one hundred miles farther in haul, sometimes doesn't amount to very much; it is according to how you are situated to take care of the traffic. I think myself, if the roads haul it for 7½ cents from Minneapolis to Chicago, that there would be some more profit in the haul from Albert Lea to Chicago than there would be of the other haul, although I am not—

Q. Well, there would ordinarily, at least, be the difference between the labor of running the train that distance and the furnishing of the steam?

A. Yes, there is some difference. Of course, the intermedi-

ate grades affect the steam. I mean the grades of the road. A shorter haul with heavier grades would mean very much higher operation than a long haul and level surface. Take the Burlington railroad,—

Q. I asked you if 7½ cents was compensatory for hauling wheat and wheat products from Minneapolis to Chicago by way of Albert Lea, whether there wouldn't be a greater profit in hauling wheat in the same quantities at the same (7½ cents) over the same line from Albert Lea to Chicago, and you finally said you thought there would.

A. Oh, you mean over the M. & St. L. road to Albert Lea and then from Albert Lea to Chicago? You are comparing the M. & St. L. through rate from Minneapolis to Chicago with Albert Lea to Chicago?

Q. Yes.

A. I misunderstood your statement. I thought you asked for the haul *via* other lines. There is some difference in favor of the Albert Lea haul. That is, we can haul it cheaper from Albert Lea to Chicago,—I should think they could haul it cheaper from Albert Lea to Chicago than the two lines can haul it from Minneapolis to Chicago.

Q. And what is the rate, did you say, from Albert Lea to Chicago from points beyond Albert Lea, 15 cents a hundred, isn't it?

A. That is, from points between Albert Lea and Chicago?

Q. Yes.

A. Yes.

Q. That would include points between Minneapolis and Albert Lea?

A. Yes, sir, that includes them all.

Q. Now, you spoke the other day of the difference in the cost of transporting or operating certain local freight trains between Minneapolis and Albert Lea and certain through

trains, as you called them. Now, what is a through train, as to your road, for instance?

A. Well, a through train would be one which would take freight, for instance, southbound, Mr. Durment, from Minneapolis, and haul freight for points beyond the termini of the road. That is, that is the understanding I would have of it. Take, for instance, flour going in a train from Minneapolis to Albert Lea, the loads destined beyond on other roads, merchandise coming back in the same train to Minneapolis.

Q. I don't know that there is such a case, but suppose a train was hauling certain wheat to Albert Lea, and certain points destined beyond; both would be through freight, would they?

A. I believe they would, Mr. Durment, and I believe that even through trains haul intermediate stuff for intermediate junctions oftentimes.

Q. A through train in the way of a freight train on your road, as well as other roads, really means a train that carries traffic from the end of a division to the other?

A. Well, that might not be so. For instance, I should call a through train—our time-card tells whether they are through or local; speaking of a train going out into South Dakota, for instance, there are local trains that go over the division in the local work, doing the local switching. Now, the through train might be a train that would go out to Morton, for instance, one day, and then the next day another train peddle west, but our tonnage is so light west of Minneapolis that it is pretty hard, the year around, to have distinctively through trains.

Q. I didn't mean by my question to ask what was through freight, but what was a through train.

A. Well, a train from Minneapolis to Albert Lea, say No. 96, would be a through train. That is supposed to handle business from the Iowa Central and Illinois Central and come into Minneapolis solid and go out with freight to other roads

solid, or the C. R. I. & P., or any other trains from that point, but that don't mean that she don't do anything else, because if she wasn't loaded up so as to work on a profit on that through business we might put in some other business.

Q. But it means a train—

A. That handles business beyond our roads.

Q. Well, a through train is one that starts and runs through the length of an entire devision before it stops?

A. Yes.

Q. I mean not before it stops but before it goes out of service.

A. Yes, sir.

Q. And Minneapolis to Albert Lea is a division on your road?

A. Yes, sir.

Q. And a through train going that way from Minneapolis would be one from Minneapolis to Albert Lea?

A. Yes.

Q. And does it ever happen that local trains run clear through from Minneapolis to Albert Lea?

A. I shouldn't think so. It would be an extraordinary thing.

Q. But it isn't the rule?

A. Oh no.

Q. Now, the through trains, of course, ordinarily handle the traffic or freight which is to be transported by your road from Minneapolis to Albert Lea, whether that be the destination or whether the destination is beyond Albert Lea?

A. I should say so, yes.

Q. And for such traffic as is to be delivered, or its destination is Albert Lea, that would be delivered to the consignee at Albert Lea, and the other traffic or freight destined for points beyond would be delivered to the connecting carrier at that point?

A. Yes.

Q. Do these through trains handle any business except that which is to be transported through the length of the entire division?

A. I think it does, at times, Mr. Durment. I think there is no doubt of that.

Q. Do you mean to say that the through trains, starting from Minneapolis for Albert Lea, might take out from Minneapolis freight the destination of which is a point nearer Minneapolis than Albert Lea, or would it pick it up along the line and carry it to Albert Lea only?

A. Well, I have in mind a ruling I made once, if you would permit me, would explain that.

Q. Yes.

A. I think the people at Waseca at one time wanted their freight at an earlier time than the local was getting it in there, and I found that because of the watering facilities and the stopping at the Junction and one thing and another, I could let that merchandise get in there quicker on a through train than I could by forcing it around on a local, and I think I made such a ruling that a car or two should be put in the through train and left at Waseca. I may have made a similar ruling in one or two other cases. But it would not be necessary for my ruling, and I think it is done without that. If a through train should be, for instance, run in two sections, and one section is full and the other section is half full, no doubt they would take intermediate freight and set it out at the different places.

Q. And I suppose that they would also pick up freight at intermediate points and take it on to Albert Lea, depending upon the condition of the trains and the condition of the traffic?

A. They would; that is what the trains are for, particularly where our gross earnings are so light that at times we have to have more through trains than our through traffic will provide for.

Q. Local trains, then, would not at any time haul through freight?

A. Oh, yes.

The MASTER: To Albert Lea?

Mr. DURMENT: Well, to Albert Lea or to Minneapolis, for instance.

WITNESS: I think it would. I think on a railroad with a gross freight earnings of $2,500 a mile, that that must be done and is done. Mr. Durment, we have some through flour trains, solid flour trains, say out of Minneapolis, that would go solid clear through, say to Peoria, so that the trains would be delivered say, solidly, to the connecting line at Peoria; they would go from Minneapolis to Albert Lea and be delivered to the Iowa Central railroad; from there they would go solid to Peoria. Now, the M. & St. L. might haul sixty cars from Minneapolis to Albert Lea as a through train, then when it goes over to the Iowa Central, the Iowa Central would have to break it up and put on say three engines over some divisions with the same amount of freight, but it is a through train just the same and would be delivered solidly at Peoria. Those trains are not scheduled.

Q. But we are speaking of scheduled or through trains on your own line.

A. Yes, I understand.

Q. Now, what is the difference between through freight and local freight?

A. Well, what I have meant by through freight is as has been described. Then a local freight (I should say a local train), where the empty cars are set at the freight-house and merchandise loaded in the empty cars for all of the stations along the line intermediate say, with Albert Lea. The merchandise might be loaded for ten or fifteen points, it is according to how the grain movement is into Minneapolis. It might be carelessly loaded, in other words, because they would expect

to kick out the cars all along. Then, in another case, it might be more concentrated. There might be more handled; a local train on the M. & St. L. road would not describe a local train on any other road in the world.

Q. Well, we want it on the Minneapolis & St. Louis.

A. So that I am looking for a Minneapolis & St. Louis local train definition. I have been thirty years in the railroad business, and I haven't been able to find it. But the traffic is so thin that a local train doesn't do half the service that it should do.

Q. Well, it picks up—

A. It picks up and sets out.

Q. —at all stations between its starting point and its ending point?

A. Yes, it does the switching even for through business. It may do all the switching for through business, but with us, we aim as far as possible to have another train that we call the switching train; for instance, we will find two or three mills where we have to keep the switch-engine at one mill, and run the engine around to different points to take care of the switching.

Q. That is, the switching for the mills and in the local yards?

A. And in the local yards. That relieves, sometimes, the local train of that much work, or the switching train of that much work. It is a constant economy fixes that.

Q. Do you ever use the engine of a through train for any of that switching?

A. Oh, I believe that our engines are all mixed up—do other service as they happen to come along. We haven't many of them, and, of course, on those local trains we aim to use the smaller, lighter engines, they do less damage to the track, less damage to the switch, and they do the work just as well, although we find with the heavy freight equipment now, that the

larger engine, even the engine we use on our through trains, is the engine necessary to do work economically in and out of industries.

Q. Then, as I understand it, the situation is this: That ordinarily, or in many instances, you have switched trains or engines to do your switching in and out of industries?

A. Yes, sir.

Q. Though very frequently the engine of the local freight is used for that purpose if the other engine is not at hand?

A. The engine of the local freight does the most of it, but she is relieved somewhat by those engines at certain points, I couldn't tell you the points.

Q. And at certain points and times the engines off the through trains are used for doing a certain amount of switching in and out?

A. They wouldn't be supposed to, Mr. Durment.

Q. Well, but they do in fact, I understood you to say.

A. Well, yes, but I guess we don't quite understand each other. You mean the engine on the through train?

Q. Yes.

A. Oh, I thought you meant that we used our engines to mix them up from the through train to the local train.

Q. No.

A. We do that. Well, the through train would not be supposed to do any switching at all. Now, I have in mind trains north-bound, to points where we want to get our merchandise into Minneapolis, for instance, and St. Paul, in competition with the other lines that have absolutely through trains that don't do anything. We can't afford that always. The result is that we won't let them do any switching at all north-bound. Now, on south-bound traffic the general superintendent often times—I suggested (I don't want to lose money for the Company, I want to meet the competition)—I told him that he can use these through trains for switching on south-bound traffic.

How much there is of it I don't know.

Q. And you usually use a heavier and different engine for through trains than local?

A. Well, that is the plan. Now, I wouldn't want to answer that question definitely, Mr. Durment, because I don't run the trains.

Q. Now, in taking up and hauling through business, do you always haul it in carload lots between stations?

A. Now, just what do you mean?

Q. Well, do you take on through trains any traffic in less than carload lots to each consignee, for instance?

A. Well, that would be concentrated in one car and go to the division point. If we started a car of merchandise from Minneapolis to Albert Lea, for instance, it might have Albert Lea traffic in it, but it would not have traffic intermediate in it. That is, it would not be supposed to have it in it. Now, we can vary that rule any time we please, any time that the economical operation of the road would demand that we do it, if we could make time and meet the competition of the other road; but ordinarily, Mr. Durment, that car would be loaded say with merchandise—Albert Lea stuff might be in it—and then merchandise for points beyond would be in the same car, and the car would be as we say "worked" at Albert Lea, and the car might come back to us and the through traffic put in another car and go beyond, in the case of merchandise.

Q. I suppose that it might also be that the car would go to Albert Lea and the freight in it there taken out and distributed and be carried out on your other trains in less than carload lots?

A. Well, that might be because some of the other roads—You see what would be local to another road, like the Illinois Central, would be through to us at Albert Lea.

Q. And what would be through to you will be local to the other line?

A. It might be.

Q. So that a car made up at Minneapolis on the Minneapolis & St. Louis might be through freight as to the Minneapolis & St. Louis and yet contain in it a small quantity for Albert Lea and a small quantity for each of a dozen other stations upon the Iowa Central and the Illinois Central or other roads, might it not?

A. Well, what would be through to us might be local to the other roads and they take it out on a local train.

Q. So that what would go to Albert Lea on your road as through freight in one car might be distributed to destinations beyond by the use of a half a dozen cars?

A. Well, that might be. We might want our car back. It is worked at Albert Lea.

Q. But if it contained freight over two different lines, for instance, which would be local to the Illinois Central and also freight local to the Iowa Central, you would have to distribute it at Albert Lea?

A. We would endeavor to get one of their cars and send it home if we wanted to send it home. On the other hand, if we were needing their car for a carload shipment out of Minneapolis, we would probably do some consolidating by putting it in their car. It is a matter of detail that would be under the supervision of the general superintendent.

Q. I suppose from what you have said that on the Minneapolis & St. Louis with even your through trains you will ship cars from Minneapolis made up of shipments that are to be distributed along the line, at some important points along the line?

A. The setting of a car out—that is, the load would not be distributed, we have only in one or two instances, as I say, made a ruling that they can kick a car out, at Waseca, for instance, just throw it out and then "skin out" with their train;

it doesn't take five minutes time and it accommodates a community.

Q. And they may pick up one and send it out?

A. They might do that but I have never known that to be done.

Q. But you would not, on a through train, distribute any broken lots?

A. No.

Q. Nor less than carload lots between Minneapolis and Albert Lea at intermediate points?

A. That is not the idea.

Q. Well, that may not be the idea, but I am getting at the practice on your road.

A. Well, it might be done sometimes. The economical operation of that train would be the first thing. Now, if we could get to Albert Lea on time and do it, that is, make our connections and perform the service clear through in competition with the other carrier, we would reserve the right to use that train in any way we pleased. We don't aim to do that because we want to make our through trains do their work, and at certain periods of the year we don't do it at all—what you suggest that we do,—for considerable periods of time, but since the panic last fall we have been up against it and may have changed our rules somewhat in connection with through trains. One month we might do it, and another month we might not do it.

Q. I suppose that the various roads make through rates on shipments less than carload lots, that is, have a way by which they make through rates beyond their lines on to other lines for less than carload lots as well as carload lots?

A. We have through tariffs on merchandise, class rates, just the same as we have on commodity rates. Not always in the same territory, but rates are made that way just the same on the classes on the commodity rates.

Q. So that in shipping merchandise from Minneapolis to

points in Illinois where you would make up a car of merchandise some of which would be destined for points on the Illinois Central, some of which would be destined for points on the Iowa Central, you would make the through rate, or might make the through rate, to the point of destination from Minneapolis on each lot, might you not?

A. There are certain through rates but I never could conceive of a carload of merchandise once a month from Minneapolis to any of those points.

Q. That may be, but I am asking—

A. There is a through tariff covering the territory.

Q. And that when it would be delivered by your road to the Iowa Central and the Illinois Central at Albert Lea for the purpose of handling, would practically be the same as local freight on those lines? I mean it would be dropped along the line as they would need it.

A. Well, say a car leaving Minneapolis with merchandise on the Iowa Central, now a shipment going to Northwood, Iowa, then a shipment destined to Mason City, then a shipment destined to Eldora and one for Marshalltown: Now, at one time, we aimed to put all of our stuff for points north of Marshalltown, for instance, in such cars as they would not interfere with any stuff that we sent south of Marshalltown; I don't think, however, that worked very well, because we aimed to let the dry-goods people of Minneapolis into that territory, they said they could do something in there if we would give them better service, but I don't believe we shipped ten yards of calico in three months, so I don't think that the service south of Albert Lea, except on carload stuff, made any reference to through trains. Now, from Peoria, for instance, we might have through cars coming from as far as New York, going right in to Minneapolis. In that case that would come on through trains all the way through and have the preference. North-bound we do pay more attention to our through train service than south-

bound, and we are much more jealous of the time because competition demands a different kind of time, a better time, on our north-bound trains than on our south-bound trains, which is a different kind of traffic altogether.

Q. I suppose, Mr. Tittemore, that there is a considerable amount of merchandise or other freight shipped north that would come to Albert Lea on through trains and would be distributed by your road at points intermediate between Albert Lea and Minneapolis?

A. Not very much. Some.

Q. Some?

A. Yes, I think in that case we would take the cars as they come to us, whether they had ten pounds or ten thousand, and throw them out at the junction. We would not re-work that.

Q. Oh, you would not re-work that at all?

A. I don't think we would. I think we would throw it out for the reason that every one of the industries along our line want the empty car for return loading, but it might as well be set in there for a small jag of merchandise and save the time of the train as to work it, the equipment would be used the next hour taking out a shipment.

Q. Then you would handle all those just as though they were in carload lots?

A. No, I didn't mean that, Mr. Durment, because the shipments coming from the Iowa Central and the M. & St. L. or the Illinois Central—the Iowa Central for the M. & St. L. south of Minneapolis and St. Paul, would be so loaded as not to interfere with the operation of those through trains north-bound and would be thrown out at Albert Lea, no doubt, and follow out on another train,

Q. On a local?

A. Yes, local train.

Q. That is what I am getting at, that through freight, merchandise that was put up in carload lots on the Illinois Central

or the Iowa Central and hauled in carload lots to Albert Lea would be hauled by you (by your road) often times on your locals and the freight distributed as local freight?

A. Yes.

Q. In the same manner?

A. Yes, it would be in every case excepting Minneapolis and St. Paul.

Q. And that would not be reshipped or rebilled at Albert Lea?

A. Not necessarily, but there is a very small amount of it. When we speak of a carload I wouldn't say that there would be a carload in a month.

Q. But there would be less than a carload?

A. It is a very straggling, insignificant, unusual traffic; there is no steady stream. That is not the case with St. Paul and Minneapolis. But to our local points there is not enough of it to give us any concern as to its whereabouts so it goes into our local trains and is put out just the same as though it was a shipment from Albert Lea to some point along there and usually would come on a through way-bill, of course.

Q. Yes, that is what I mean.

A. Yes, on a through way-bill.

Q. But how would you distribute to your own cars at Albert Lea when you received it from the other roads?

A. Oh, that probably never is done twice alike. Equipment up along our line for loading back—the Illinois Central may want the local back—we take it out on our local, instead of throwing the local out at Hartland or Manchester or Kilkenny, we just throw out the little jag of merchandise. If, on the other hand, it is anything like a box of matches, a box of prunes, clothes-pins, and equipment is pretty scarce, it is apt to be thrown in one car, put near the door and put out just as you would express matter; but there is no real rule for that on our

road, because there is so little of the traffic it would be better if we didn't have it.

Q. Where is the end of the way-freight division from St. Paul to Albert Lea; that is, running from Minneapolis or St. Paul to Albert Lea?

A. I imagine Albert Lea. I am not acquainted with all of our operating workings except as they are scheduled, but Albert Lea is our division.

Q. Do your local trains run through the length of the entire division?

A. I believe they are scheduled on the time-card the length of the division.

Q. My recollection is you testified that under some circumstances wheat or its products would be hauled by the Minneapolis & St. Louis from Minneapolis destined for Chicago where the Minneapolis & St. Louis would get 2½ cents out of the 7.5 cents proportional for the work it would do between Minneapolis and Albert Lea; is that right?

A. I can't remember that. If I testified to that I certainly misunderstood the question, because it was not so.

Q. Maybe I am wrong about it, maybe it referred to something else.

A. It must have referred to something else, because I haven't any such thing in mind.

Q. You were to furnish us a coal-tonnage list, showing coal at other figures than $1.40 through. You said there was other coal than the $1.40?

A. Oh, yes. I guess I have that. I think it was the districts that we referred to, wasn't it?

Q. I think so.

A. For instance, I have in my hand (and I think this is what you requested) soft coal districts, Illinois and Indiana. I would like to testify and change my testimony as regards Indiana, if you will ask me how I want to do it. My testimony, I

don't think, has referred to Indiana coal, I want to have it complete, particularly as to the division of the rate north of Peoria.

Q. You were asked to furnish a statement of the different coal districts from which the soft coal brought over your road into Minnesota comes; I ask you whether Defts Ex. A is a statement of such districts.

A. Yes, they comprise the districts that we have tariffs from in connection with the Iowa Central and the Illinois Central.

Q. And you get only soft coals from those districts?

A. Different grades of soft coal.

Q. You said, I believe, that $1.40 was the lowest tariff on coal from any of these soft coal-fields over your lines to Minneapolis?

A. I stated that, I think, in my testimony last week, but I find that we have some Indiana traffic from the Brazil district and the Sullivan county district. I had asked the tariffs to be cancelled because the connecting lines were only willing to haul north of Peoria at $1.20 per net ton, and that is still a subject of debate, and my tariff clerk has orders to cancel the contracts; we don't want the business at our proportion of the $1.20, but that tariff is not cancelled yet and the question of division is in the air.

Q. How long has that tariff been in force on your road as to those two fields?

A. Some time. I have not the tariff and I can't tell you.

Q. Will you find out when that went into effect so that we may know how long?

A. Yes.

Mr. BUTLER: $1.20 from Peoria to Minneapolis on Indiana coal?

WITNESS: Yes; and it is made because the lines from Chicago to Minneapolis take $1.20.

Q. On that same coal?

A. On that same coal; and on other coal they take $1.20.

Q. This $1.20 proportional that you speak of for coal from the Indiana districts to Minneapolis, is for the haul over the Iowa Central and the Minneapolis & St. Louis, or over what other road than the Minneapolis & St. Louis?

A. The Iowa Central and the Minneapolis & St. Louis. I think that all comes to us, what little we get of it, at Peoria. The Illinois Central may give us some at Albert Lea, but I think not. The tariffs we give you will show that.

Q. Then I would like to know what proportion of that $1.20 the Minneapolis & St. Louis gets for the haul from Albert Lea to Minneapolis.

A. I will figure that out with the tariffs that I submit.

Q. Both as to the coal delivered to you by the Iowa Central and by the Illinois Central?

A. I will do that. And would not that include coal that comes to us and goes to intermediate points between Albert Lea and Minneapolis?

Q. Let it show that, also.

A. I think there is a difference in the division there.

Q. Now, what rate do you get on bituminous coal from the other districts on this Ex. A? There is the Peoria district, the Northern Illinois district, the Springfield district, the Carterville district.

A. The Peoria district would be $1.40. That would be, so far as we are concerned, our own district. That is, we have a Peoria district. The Burlington might have a Peoria district, the Northwestern might have a Peoria district, and this list is our Peoria district.

Q. That is the Minneapolis & St. Louis Peoria district?

A. Yes; but the rate from all of the Peoria district, by all the lines, would be $1.40.

Q. What do you mean by "our Peoria district"?

A. Well, I mean, for instance, we have three lines almost within the city limits of Peoria, but on our tracks exclusively,

don't you see, on our main line; just as we come up what we call the hill—

Q. That is on the Iowa Central?

A. On the Iowa Central,—we call that our Peoria district; whereas, a mine just two miles over, on the Burlington, would not be in our Peoria district, but would be in the general district. That is what I mean to say.

Q. When you say "we" and "our" you have no reference to ownership?

A. No,—designating the location and what we can control.

Q. Now, from the northern Illinois district what is the rate?

A. Well, I would call the northern Illinois district the Springfield district.

Q. You have here two districts, the northern Illinois district and the Springfield district.

A. In this tariff that I have in my hand (it is Interstate Commerce No. E-952, M. & St. L. G. F. O. No. 2067-A, Illinois Central coal tariff No. 1317,) the northern Illinois district includes the mines at La Salle, Spring Valley, Bloomington, and other stations in Illinois north of the Peoria district. Group No. 1 is what I would call the northern group.

Q. What would be the rate on that to Minneapolis?

A. The rate from points in Group No. 1 to Minneapolis is $1.40.

Q. Group No. 1 is what you have fixed in your schedule, Defts' Ex. A, as "Northern Illinois district."

A. The northern Illinois district.

Q. What portion of that $1.40 would the Minneapolis & St. Louis get?

A. The Minneapolis & St. Louis would get, on the Minneapolis business, I notice, a terminal charge of $3 per car, which is to be deducted before prorating and adding it to the Minneapolis & St. Louis proportion. That is the terminal charge or

arbitrary. Then the balance is to be divided, 23 per cent to the Minneapolis & St. Louis road. That coal is delivered to us by the Illinois Central at Albert Lea.

Q. In the Springfield district, what do you call that?

A. The Springfield district includes mines located south of Peoria to and including Springfield, Petersburg, Illinois, etc. That would be Group No. 2, as per the tariff described before.

Q. What is the rate on that into Minneapolis and what portion of it does the Minneapolis & St. Louis get and from what road does it receive the coal at Albert Lea?

A. The rate from mines in Group No. 2, or the Springfield district, to Minneapolis, would be $1.80, and the Minneapolis & St. Louis road gets exactly the same out of the $1.80 that it would get out of the $1.40 rate.

Q. You mean exactly the same amount or exactly the same percentage?

A. The $1.40 rate would be divided, the arbitrary would go to the Illinois Central road. They get 40 cents, for instance. That is called an arbitrary and a local; that is the way those rates in Illinois largely are made up. So you will understand it exactly, if that was to come to the Iowa Central from the Springfield route, for instance, supposing the Illinois Central was to deliver it to the Iowa Central, they would get the full 40 cents for their haul up from Peoria and then $1.40 to Minneapolis. Now, the Illinois Central get that 40 cents as an arbitrary, just as though they hauled it up to a junction in Illinois and delivered it to some other railroad company. Then the $1.40 rate is divided between the Illinois Central and our road. In this case the tariff reads over the Illinois Central; they get the 40 cents in addition to the 77 per cent.

Q. Then, as I understand it, the coal in this Springfield district or Group No. 2 would come to your road from the Illinois Central railroad; the Illinois Central railroad would first take out 40 cents of the $1.80, then the remaining $1.40 would be

prorated, the Minneapolis & St. Louis getting $3 per car terminal charge, and the balance of $1.40 would be divided, 23 per cent to the Minneapolis & St. Louis and 77 per cent to the Illinois Central?

A. That is it. The division-sheet itself reads, under the caption Divisions, "Deduct 40 cents per ton, to be added to the Illinois Central railroad proportion and divide the remainder on the basis of the following percents"—which you have there.

Q. What is the distance from Springfield to Albert Lea?

A. If you want to get it exactly I will have to get a guide, but it is about 425 miles.

Q. And the distance from Peoria to Albert Lea is what?

A. 371 miles.

Q. Is there any considerable quantity of coal from the northern Illinois district, Group 1, distributed by the Minneapolis & St. Louis road on its lines to points between Albert Lea and Minneapolis?

A. That is the Peoria district?

Q. No, that is the northern Illinois district.

A. That is Group 1 in this tariff. Well, there is some, but I couldn't give the quantity; I don't know.

Q. In what way is the charge for freight on such coal as that fixed and how is it divided between your road and the other roads?

A. Division-sheet M. & St. L., D. S. No. 41, Illinois Central Railroad No. 1368, in Section 2 makes these divisions: Chicago and stations on Illinois Central railroad taking same rates as provided by current tariffs to M. & St. L. stations, Manchester and St. Louis Park, inclusive, (that takes in the stations you have asked about) all freight except grain, grain products, seeds, coal and coke, *via* Albert Lea, Illinois Central Railroad 60 per cent, M. & St. L. Railroad 40 per cent. While in that division-sheet it says soft coal and coke and grain, there is another sheet to the division-sheet, captioned "Coal divisions

No. 991," which gives the divisions to stations on the Minneapolis & St. Louis road, Manchester to St. Louis Park, inclusive, 40 per cent to the Minneapolis & St. Louis Railroad.

Q. That 40 per cent is 40 per cent of a through rate to that local station, I suppose, not 40 per cent of $1.40?

A. Yes, it is 40 per cent of the $1.40, I think, for this reason: Before these divisions are made in the coal-division sheet No. 991, it states "deduct 40 cents per ton to be added to the Illinois Central proportion and divide the remainder on the following per cents" which applies to coal when destined to stations St. Louis Park to Manchester, Minnesota.

Q. Yes, I know, but doesn't it also fix the rates for the haul to the points in Minnesota to which the coal is destined?

Mr. BUTLER: Other than Minneapolis, different from Minneapolis rates, you mean?

Mr. DURMENT: Yes, other and different from Minneapolis rates.

A. Referring again to M. & St. L. G. F. O. No. 2067-A, the rate for instance, to Manchester *via* Albert Lea is $1.40; the rate to all of the points between St. Louis Park and Manchester (the first station north of Albert Lea) and from Group 1 is $1.40.

Q. I suppose that the division-sheets and the tariff to which you have been referring are the ones in force at the time this Ex. 14 was made, covering that period?

A. Well, this tariff that I have in my hands cancels other tariffs that were in effect at the time of that exhibit, but there are no changes in those rates.

Q. The rates were the same?

A. The rates were the same.

Q. Did those new tariffs, which you refer to now, change the division either?

A. The divisions with the Illinois Central road, to my knowledge, have not been changed in that respect for four years.

Q. Then the rates and the divisions, as given on the sheets from which you have been testifying as to these coal-fields this morning, are the same as the other traffic-sheets which were in effect during the period covered by Ex. 14?

A. Yes. There are no deductions for terminals on intermediate points. We get the full 40 per cent of the $1.40 rate on Group 1 rate, we get 40 per cent of $1.40, which is a group-point rate.

Q. And that covers that full amount—nothing additional for terminal charge?

A. Nothing additional.

Q. Take the intermediate points between Albert Lea and Minneapolis on the Minneapolis & St. Louis railroad during the period covered by your Ex. 14, what proportion of the rates does the Minneapolis & St. Louis road get from the Springfield district?

A. From the Springfield district to stations St. Louis Park to Manchester, the Springfield district being Group 2 in the tariff referred to before, our Company would get 40 per cent of a $1.40 rate or 56 cents per ton.

Q. And that would be in full, nothing would be added for terminals, as in the case of coal through to Minneapolis?

A. No, we would get no terminal arbitrary in that case.

Q. Now, take the Carterville district, which includes mines located in Illinois south of the Springfield district. From what road did you receive that coal during the period covered by Ex. 14, and what was the rate through to Minneapolis and what proportion of the rate did your road get?

A. The Carterville rates really include groups 3 and 4 in the tariff referred to before, and the division of the rate to the Minneapolis & St. Louis road on the way coming from the Illinois Central at Albert Lea going to stations from St. Louis Park to Manchester—

Q. No, you have not got my question. The rate through to

Minneapolis was the first I asked you.

A. The through rate to Minneapolis from Group 3 would be $2 and from Group 4, $2.10.

Q. What proportion of that would the Minneapolis & St. Louis get to Minneapolis?

A. The Minneapolis & St. Louis road would get its proportion of the $1.40 rate; that is, $3 for terminal deducted and 23 per cent of the $1.40 rate; the balance would accrue to the Illinois Central railroad up to Albert Lea.

Q. And that would be hauled from where?

A. Albert Lea to Minneapolis.

Q. I know, but the mines would be how far from Albert Lea, or do you know?

A. Well, I would have to figure it out; I would have to get the groups and a guide. But those distances there in southern Illinois vary greatly. Their arbitrary would be 60 and 70 cents there for the haul from their stations to Peoria or to the junction-points at which they might deliver to some other road. Those stations are grouped with the idea of an arbitrary above Peoria, because, for instance, the Illinois Central might deliver that freight to the Milwaukee road down at some junction in Illinois and get its 60 or 70 cents up to that junction and the Milwaukee would get the balance to Minneapolis.

Q. Then the rate is really, from Peoria to Minneapolis, $1.40?

A. $1.40.

Q. From the mines to Peoria $2 and $2.10, according to the group from which it comes?

A. That is it.

Q. And as I understand it, of that $1.40 from Peoria to Minneapolis the Minneapolis & St. Louis road gets $3 terminal?

A. Yes.

Q. And then 23 per cent of $1.40, or 23 per cent of what is left?

A. 23 per cent of what is left.

Q. What proportion of the freight would the Minneapolis & St. Louis get for coal of this character delivered to it at points intermediate Albert Lea and Minneapolis?

A. It would get 40 per cent of the $1.40 or 56 cents net.

Mr. BUTLER: Is that delivered at junction-points between Albert Lea and Minneapolis, or delivered by it to its own stations between those points?

Mr. DURMENT: By it to its own stations between the points, I meant.

A. Well, I supposed you meant coal coming to us at Albert Lea for points between St. Louis Park and Manchester.

Q. Yes, on your own line.

A. On our own road. We would get 56 cents a ton or 40 per cent of the $1.40 rate.

Q. In case you were to deliver this coal at junction-points, there to be taken on other lines or by other lines, what would be the rate of division?

A. Well, there would be no division, for the reason that this $1.40 rate would be coming up at all these junctions and it is routed that way; there would be no rates to us that way. It would make the rate so much higher that the distance tariff would have to be added to it.

Q. Now, in all these groups here, as I understand it,—the Peoria district, the northern Illinois district, the Springfield district and the Carterville district, as well as the Brazil district and the Sullivan county district, in Indiana,—that coal might come to your road at Albert Lea over the Iowa Central, might it not?

A. It can come to us from the Iowa Central, I think, from all of that district, but it don't.

Q. Well, doesn't any of it come?

A. Well, a few straggling cars might, but the Illinois Central road wouldn't know it if it did, and they arbitrarily divert

the business away from us; they want the long haul, they want the use of their equipment.

Q. But in case coal of that sort did come, I suppose it would be divided (your proportion of the $1.40) between you and the Iowa Central, wouldn't it?

A. The division to the M. & St. L. would be exactly the same coming from the Iowa Central as it would be coming from the Illinois Central.

Q. That is, the Minneapolis & St. Louis road would get its $3 arbitrary terminal plus 23 per cent of the remaining $1.40 on Minneapolis?

A. Yes.

Q. And the Iowa Central would get its pay outside of that from the rest?

A. Yes. Now, the intermediate—I have the division-sheet right before me here—The Minneapolis & St. Louis road, instead of getting 23 per cent if the freight was to come from the Iowa Central road (that is, if the coal was to come from the Iowa Central road to the M. & St. L.) at Albert Lea, the $3 arbitrary would be deducted first and then the M. & St. L. would get 22 per cent of the remainder; there is one per cent difference between the two.

Q. But you say practically no coal comes that way?

A. Not over the Illinois Central.

Q. But from any of these fields I have mentioned.

A. Oh, from the Peoria district, of course, it would come over the Iowa Central, and then to Minneapolis, and the $3 and the 22 per cent would apply.

Q. But the other fields would come over the Illinois Central and it would be the $3 and the 23 per cent?

A. The large majority of tonnage would come that way.

Q. And in the Peoria district, where the coal is received from the Iowa Central by the Minneapolis & St. Louis road at Albert Lea, what would be the division for coal destined to

points intermediate Albert Lea and Minneapolis?

A. That would be 40 per cent to the M. & St. L. when destined to stations St. Louis Park to Manchester.

Q. 40 per cent of the entire?

A. Of the entire $1.40, or 56 cents. That division would be the same.

Q. No arbitrary in that case?

A. No arbitrary.

Q. And the rate would be the same for all points between Albert Lea and Minneapolis as to Minneapolis?

A. $1.40, yes.

Q. During the period covered by Ex. 14, the rates for coal of this character, bituminous coal generally, from Duluth to Minneapolis were $1.40, were they not?

A. No.

Q. What was the rate?

A. I think the rate was 90 cents. During all of the testimony last week we referred to the dollar-rate and the 75-cent rate and the proportional rate as local rates. Now, that is incorrect.

Q. Then state what would be correct.

A. That is correct so far as the division of the rate to us is concerned when it comes to us, but I think that the northern lines publish a local rate of $1.25 on hard coal and 90 cents on soft coal from Duluth to Minneapolis, St. Paul and Minnesota Transfer, and when it is going to our line, and possibly to other lines, it is $1 on hard coal and 75 cents on soft coal.

Q. Would not the rates from Duluth to the various points on your line between Albert Lea and Minneapolis be the same as the rates from Minneapolis to Duluth during this period—from Duluth to Minneapolis?

A. I don't quite understand the question.

Q. Well, there was a flat rate of $1.40 from the Peoria district to Minneapolis?

A. Yes.

Q. And to all points intermediate Albert Lea and Minneapolis?

A. Yes.

Q. Was there not also a flat rate from Duluth to points on your line through Minneapolis to Albert Lea?

A. I think so. I will look it up. I have in my hand M. & St. L. G. F. O. No. 15651, dated November 10, 1906, and the rate from Duluth, Minnesota, Superior, Allouez, Ashland, etc., on soft coal to stations Eden Prairie, Minnesota, (which is pretty close to St. Louis Park) to Albert Lea, Minnesota, inclusive, is $1.40. The same rates did prevail from Duluth as prevailed from Peoria during that period of time.

Q. But the rate from Duluth to Minneapolis was less?

A. The rate from Duluth to Minneapolis was less than $1.40.

Q. Now, what part of the $1.40 would the Minneapolis & St. Louis road get on shipments to those points, Eden Prairie to Albert Lea?

A. I don't happen to have the division-sheet here, but the division is 75 cents up to Minneapolis and the balance to the M. & St. L., or 65 cents.

Recess until 2 P. M.

AFTERNOON SESSION

Q. There was one matter you wanted to correct?

A. Yes, that, Mr. Durment, was the question of division on soft coal from the Peoria group, when destined *via* Albert Lea to points on the Minneapolis & St. Louis road between Manchester and St. Louis Park. The division to the M. & St. L. is thirty per cent instead of forty per cent, as I stated before, which would make the net division, without terminal arbitrary of any kind deducted, 42 cents to the M. & St. L. road instead of 56 cents.

Mr. BUTLER: That is on coal coming from the Iowa Central?

WITNESS: That is on coal coming from the Iowa Central and not applying to the Illinois Central.

Q. On the Illinois Central it is forty per cent?

A. It is forty per cent or 56 cents. I understood that was from Albert Lea.

The MASTER: Manchester is just above Albert Lea?

WITNESS: Yes; destined from the first station above Albert Lea to the first station this side of Minneapolis.

Q. I suppose you have a printed list of stations and the mileage between Minneapolis and Albert Lea, haven't you, and perhaps on your other lines from Minneapolis west?

A. We have a regular printed distance table, giving the distance between all stations.

Q. Will you produce one of them for us?

A. Yes, this is it.

Q. Now, take your Exhibit 14. We have discussed wheat and flour and soft coal pretty extensively for several days. What hard-coal traffic is there on your road?

A. Well, there is considerable hard-coal traffic. It, of course, is small in comparison with the soft-coal traffic. The hard-coal traffic would be that which goes to the more intermediate points; we don't handle very much hard coal into Minneapolis, for instance; we don't compete for the traffic, and could not get it if we did, at present rates.

Q. Well, where is your hard coal that you haul hauled from?

A. Well, most of our hard coal would come from Chicago, I think; would come to us from the Illinois Central road.

Q. And would be distributed to what points?

A. All points on the M. & St. L.; but not very much, I don't think, to St. Paul and Minneapolis. We couldn't get in there.

Q. You wouldn't haul much from Minneapolis south and east?

A. Not from Minneapolis, because that takes the Class D, you know; it would be all on the through rate from Duluth or Chicago or some Chicago junction; possibly from Manitowoc.

Q. It might be on the through rate, but your road, I mean, would it haul any hard coal from Minneapolis south or any other direction?

A. I don't think so, except on the through rate from Duluth; that is, it would not originate at Minneapolis.

Q. But it would come to your road in Minneapolis?

A. Well, Minnesota Transfer, yes. Yes, we have some.

Q. That is the question I am asking about. Was there any considerable amount of that coal handled and distributed over your road?

The MASTER: Duluth coal?

Mr. DURMENT: Yes, Duluth hard coal.

WITNESS: There is some of it; I haven't the tonnage in mind, though.

Q. And at what rates is that hard coal that goes from Duluth to points on your line handled?

A. I refer now to M. & St. L. G. F. O. No. 1-A.

Q. What is the date of that?

A. This was January 30, 1907.

Q. That does not cover the period we have in question here. Exhibit 14 is from the 1st of July, 1905, to June 30, 1906, inclusive.

A. We have sent for the tariffs; they will be here in a little while. I think there are no changes, probably, in the rate that you are going to ask me about, but we will have the tariffs here that this has superseded.

Q. You think they are the same?

A. I think they are the same.

Q. At what rates was the hard coal handled referred to in Exhibit 14?

A. The Duluth rate—of course, Mr. Durment, we have the rates from Milwaukee and Duluth and Chicago—but the Duluth rates (as per the tariff just referred to) are, to stations St. Louis Park to Albert Lea, $1.75 down as far as and including Carver; then, at Merriam Junction, $1.80; Jordan, $1.85; New Prague, $1.95; Montgomery, $1.95; then from Mulfords to Albert Lea, $2.

Q. That is, per ton?

A. Per net ton.

Q. And that is the through rate from Duluth to those points?

A. That is the through rate from Duluth to those points.

Q. And of that what portion would the Minneapolis & St. Louis get?

A. I find that where I testified that the rate from St. Louis Park down to Carver, inclusive, would be $1.75 per net ton, that there is an indication mark which refers us to a note in the same tariff which says that where hard coal is shipped *via* the C. St. P. M. & O. Ry., the Great Northern Railway or Northern Pacific Railway and Minneapolis, that the rates to Hopkins and St. Louis Park will be $1.25 on hard coal to those points instead of $1.75; and the division of the rate (in answer to your other question) to the M. & St. L. would be, Hopkins and St. Louis Park $5 per car; then from Eden Prairie to Carver, would be, to the M. & St. L., 75 cents per ton; Merriam, 80 cents per ton; Jordan, 85 cents per ton; New Prague and Montgomery, 95 cents per ton; then from Mulfords to Albert Lea, the division would be $1 per net ton to the M. & St. L.

Q. As I understand it now, on hard coal from Duluth to Hopkins, the tariff was $1.25 a ton?

A. Yes.

Q. And of that your road got $5 a car?

A. Yes.

Q. How many tons ordinarily in a car?

A. Oh, I should say hard coal would average thirty tons; that is, that Hopkins division is a division that has been in there for years for the industries there.

Q. The balance would go to the other road, that is, to the railroad bringing it from Duluth?

A. Yes, sir.

Q. But beyond Hopkins down to Eden Prairie you would get 75 cents, and the road that brought it from Duluth to Minneapolis would get $1 per ton?

A. Yes.

Q. From there on to Albert Lea, the road that brought from Duluth to Minneapolis would get $1 a ton?

A. Yes.

Q. And you would take what was left of the rate?

A. Yes.

Q. I notice on Exhibit 14 you have an amount there for "loss on Minnesota interstate traffic in hard coal." Now, I suppose that means loss which you say you would have suffered during the period covered by Exhibit 14 upon hard coal hauled from outside Minnesota into Minnesota as a destination or from some point in Minnesota to some point outside as its destination?

A. Yes; I imagine, though, that that item is composed almost entirely of interstate hard coal shipments into Minnesota.

Q. Into Minnesota?

A. Yes.

Q. And in that you don't include the shipments from Duluth?

A. No, that is not interstate business.

Q. Where would that hard coal be shipped from that is included in that Minnesota interstate traffic on Exhibit 14?

A. Well, from Milwaukee, Manitowoc; Milwaukee and Chicago, more particularly, I think.

Q. And at what rate is that hard coal brought into Minnesota from those points?

A. I refer again to M. & St. L. G. F. O. No. 1-A, of date January 30, 1907. We are to get a tariff in a few moments that will cover that exact period, but I think the rates in this tariff that we are discussing now are exactly what they are in that tariff, and the rates in this tariff on hard coal to and from the same points as referred to before, St. Louis Park to Albert Lea, inclusive, are all on the basis of $2 per net ton. The same would apply from Milwaukee, and the same would apply from Peoria.

Q. Do you bring any hard coal from Peoria?

A. Very little, I think Mr. Durment. The rates east of Peoria are higher to Peoria on hard coal than they are to Chicago and that would forestall our getting anything from that gate-way.

Q. Then as I understand it, the coal that you say would make the Minnesota interstate traffic, was brought principally from Chicago and Milwaukee and would be brought upon a rate of $2 from Milwaukee or Chicago to Minneapolis?

A. Yes; but when I speak of Chicago and Milwaukee I mean any junctions in that group; it might sift through a great many groups and a great many through junction stations. We have Chicago and Chicago-rate points, don't you see? but it is practically the same as Chicago. The line might deliver it to the Illinois Central at some point just outside of Chicago because it would be more convenient and more economical.

Q. But, so far as your road is concerned, it comes practically from Chicago or Milwaukee?

A. Yes.

Q. And upon a flat rate to Minneapolis of $2 from Milwaukee or Chicago?

A. Yes, to Minneapolis and to all points between Minneapolis and Albert Lea, on the $2 rate.

Mr. BUTLER: Does it include any Superior business?

Mr. DURMENT: No.

WITNESS: Well, it would Superior business; there would be some Superior, Wisconsin, business.

Q. There would?

A. Yes, there would be Superior business.

Q. And that would be upon the $2 rate?

A. That would be upon the Duluth rate. The Duluth rates, I notice, apply from Allouez, Ashland, Duluth, Superior and Washburn. We would be more apt to get the application from Superior than any of the other points, because they are Omaha points, and that would not be any particular good, although we do get some business from the Omaha road.

Mr. BUTLER: The Omaha road from Duluth is interstate under the definition of "interstate" given on the second page of Exhibit 4, which defines Minnesota interstate traffic, as used in that exhibit, as traffic destined or originated and destined out of the state of Minnesota but passing through a portion of it.

Q. If there is any of that kind of traffic over the Minneapolis & St. Louis it would be included in that term, of course?

A. Yes. I find here nine or ten way-bills—twelve way-bills before me—and the Duluth business seems to have come to us all from the Northern Pacific, and is about half of the business, and then the balance comes to us from the Northern Pacific from Superior. It would seem that we are getting most of our hard-coal business from the Northern Pacific Railway, and Superior would be included in that item.

Q. Now, do I understand that the larger part of these earnings for Minnesota interstate traffic in hard coal on Exhibit 14 is for coal you got from the Northern Pacific Railway—did you say?

A. No, I wouldn't say that the larger part of it was, Mr.

Durment, but I would have to consult the original figures to get the exact tonnage.

Q. You mean, then, simply that you had some bills before you that showed that you got hard coal both from Duluth and Superior from the Northern Pacific?

A. Yes.

Q. But the larger part of that was from the—

A. About one-half of it from Duluth and one-half from Superior, but all from the Northern Pacific Railway, but all the Superior business would be in the interstate item.

Q. Then there is this difference between the rate on hard coal from Duluth to points between Minneapolis and Albert Lea and the rates on hard coal from Chicago and Milwaukee that comes through Albert Lea and between points in Albert Lea and Minneapolis: In the first, the rate varies from $1.25 up to $2, —

A. Yes.

Q. —in the second case, it is $2 at all points between Albert Lea and Minneapolis?

A. Yes.

The MASTER: The second case is from the southern points?

Mr. DURMENT: From Chicago and Milwaukee, yes.

Q. Now, what proportion of this $2 does your road get, or did it get during the period covered by Exhibit 14 on hard coal shipped from Milwaukee and Chicago?

A. Stations Manchester to St. Louis Park?

Q. No, right through to Minneapolis, to start with; that is, from Albert Lea to Minneapolis, shipments through to Minneapolis from Albert Lea.

A. I can't just at the moment testify as to Milwaukee, because I haven't the division-sheet before me; I didn't want to testify as to divisions from memory, but I will get the division-sheet as soon as I can. The Chicago rates divide, as per M. & St. L. division-sheet No. 41, and Section 1 reads as follows:

"Chicago and stations on Illinois Central Railway, take the same rates provided by current tariffs to St. Paul, Minneapolis and Minnesota Transfer; when for Minneapolis, $3 per car deducted and added to M. & St. L. proportion," and the balance divided, 23 per cent to the M. & St. L. On hard-coal shipments from Chicago and stations on the Illinois Central Railway taking the same rates as Chicago to points St. Louis Park to Albert Lea, the Minneapolis & St. Louis road would receive 40 per cent; that would be 80 cents out of the $2-rate.

Q. That is, out of $2 for hard coal from Chicago to Minneapolis, you would get $3 per car and about 35 cents a ton additional?

Mr. BUTLER: Plus 23 per cent. of the balance.

Q. I know, but that would figure about 35 cents a ton?

A. That depends upon the amount in the car, of course.

Q. It would be 23 per cent of $1.97, wouldn't it?

A. No, you see you are taking $3 from the car; it depends upon the tonnage. It is very difficult to figure that unless you have the exact tonnage.

Q. You say there is an average of about thirty tons?

A. I should think about twenty-five tons; I don't think it goes over that.

Q. Then twenty-five tons to the car?

A. That would be $50.

Q. How much per ton would that be to the Minneapolis & St. Louis for the haul from Albert Lea to Minneapolis on hard coal?

A. 53.25 cents per ton, including the $3 terminal charge.

Q. Now, what would you get out of the $2 per ton for that coal which is destined for points intermediate Albert Lea and Minneapolis, coming from Chicago and Milwaukee, or from Chicago, rather?

A. From Chicago we would get forty per cent of the $2 rate, or 80 cents, and no terminal arbitrary.

Q. The hauls from Superior to points on your road were made on the Duluth schedules, were they not?

A. On the Duluth schedules and Duluth divisions.

Q. And you got all of the rates on that above a dollar a ton which the other road took to Minneapolis?

A. Yes.

Q. And the same rates of charges obtained for shipments of hard coal from Superior to points on your road beyond Minneapolis as obtained from Duluth to those points?

A. Yes.

Q. And which you have given?

A. Yes, sir.

Q. Are you yet able to state the division between the Minneapolis & St. Louis and the Milwaukee on hard coal from Milwaukee?

A. I am not yet able, but I will bear it in mind and will call your attention to it, just as soon as I can get it. That would be the smallest item in these figures.

Q. Now, I would like you to explain just what process you went through to get this item which you carry on Exhibit 14 as $3,273.95 loss on Minnesota interstate traffic.

A. Well, whatever the rate would be reduced by the statute from Duluth to any point on the M. & St. L. road, it would be charged against the division of the M. & St. L. revenue. I haven't the figures before me here, but if you will let me use a shipment west of Minneapolis I have some original way-bills right here before me covering that period of time.

Q. Well, take one of them if it will explain the process; that is the point.

A. Well, take a shipment from Superior, Wisconsin, to Boyd, Minnesota. If the rate from Duluth to some point in Minnesota would be reduced, of course it would reduce the Superior rate to that point, and the dollar-rate would be allowed to the connecting line just the same as though the rate had not

been reduced, and the difference between these rates would be charged against the M. & St. L. revenues.

Q. If you can do it, Mr. Tittemore, without taking a particular example to start with, but give us a general statement of the process by which you reach the result of $3,273.95 loss on Minnesota interstate traffic in hard coal during the period covered by Exhibit 14, I wish you would do so.

A. Well, take it in the case of Superior to all points on the M. & St. L. road, St. Louis Park to Albert Lea, the old rates were two dollars from Superior, say, the same as from Duluth. Now, the Duluth rates under the statute to certain points, to competing points on other roads and to points in contiguous territory, would be reduced, for instance, considerably under the new rate. At Merriam Junction (a junction-point with the Omaha road) it would be reduced from $1.80 to $1.48; our rate, therefore, from Duluth and Superior to Merriam Junction, would be $1.48; we would allow the connecting line $1 and we would receive 48 cents for our haul to Jordan instead of 80 cents, and that would be charged to the M. & St. L. proportion under my method of figuring. When you get down to Waterville and Waseca and Albert Lea, the rate at Waterville would be $1.75 as against a $2-rate; there would be 25 cents charged; at Albert Lea the rate would be $1.78 as against $2, and the difference between those two rates would be charged against the M. & St. L. earnings.

Q. Do you understand that the Minnesota statute to which we refer required your road to put in its rate based upon the distance from Duluth to the point of destination on your road?

A. No, I didn't understand that.

Q. The statute would require you to make rates on your line from the point say in Minneapolis or the Transfer, where your road would start for Albert Lea, would it not?

A. Well, the statute would require that we make Class D rates from there; the statute would require that, but competi-

tion—we made these rates based on competition.

Q. Then in order, as you say, to meet competition, the rates from Duluth to these various points on your line would be reduced?

A. Yes.

Q. And therefore you would reduce them likewise from Superior?

A. Yes.

Q. And you have included your Superior rates in this item here of Minnesota interstate traffic, hard coal?

A. Yes.

Q. But not your Duluth traffic?

A. Not Duluth.

Q. The distance from Minneapolis over your line to Albert Lea is 108 miles, I think you said?

A. 108 miles. I would like to say that if the Duluth rate being $1.48 at Merriam, Jordan, Montgomery, etc., would make that the rate from Chicago, also; so that on our Chicago business we would be getting our proportion of $1.48 to all stations north of Albert Lea instead of our proportion of the $2-rate, and that would be the process that we would figure on the south end of the line.

Q. But on the north end of the line you figure that you would have to make your rate from Superior the same as your rate from Duluth?

A. Yes.

Q. And that the Duluth rate, you figured, would have to be a reduction, and that the statute would require a reduction in accordance with the figures you stated as to particular points?

A. Yes.

Q. And that that would necessitate a similar rate from Superior?

A. Yes.

Q. Which would take the north end of your Minnesota interstate traffic?

A. Yes.

Q. But, under the commodity-rate act, you would be at perfect liberty to make a rate on hard coal from Minneapolis to Albert Lea at $1.06 a ton, wouldn't you?

A. Make a rate of $1.04 a ton, as I figure it.

Q. $1.04 a ton from Minneapolis to Albert Lea?

A. Yes.

Q. And you would be at liberty to make a rate on hard coal from Minneapolis to Albert Lea for intermediate stations, beginning with St. Louis Park, at what?

A. St. Louis Park and Hopkins, 60 cents; Eden Prairie, 63; Chaska and Carver, 69; Merriam, 70; Jordan, 72; New Prague, 75; Montgomery, 77; Kilkenny, 83; Waterville, 85; Waseca, 93; New Richmond, 97; Hartland, 99; Manchester, $1.01; Albert Lea, $1.04.

Q. So that, on a haul from Duluth, under the statute you were at liberty to charge $1.04 from Minneapolis; adding that to the dollar you were paid from Duluth, you were at liberty to charge $2.04, were you not?

A. We could charge $2.04.

Q. Now, why, then, did you think it necessary to make less rates so as to figure a loss on Minnesota interstate traffic, if under the statute you could still allow the amount you always allow the Duluth carrier and charge under the law $1.04 instead of $1?

A. We wouldn't get any tonnage; we wouldn't meet the competition. The rate would not be based on that figure, for instance, from Duluth to Chaska over the Milwaukee road; the rate would be $1.19, I think, under the statute, continuous mileage from Duluth to Chaska.

Q. On what line?

A. The C. M. & St. P.

Q. Then it was to meet the competition?

A. To meet the competition that we reduced our rates.

Q. Now, what other road would haul direct from Duluth into your field?

A. Well, the Omaha road would haul down to Merriam Junction, for instance.

Q. At what rate?

A. Well, I would have to have—

Q. Do you know?

A. No, I would have to have their mileage.

Mr. BUTLER: That is an interstate rate there, and they would have to make that to meet the other.

Mr. DURMENT: Well, I don't know; that is a question.

Mr. BUTLER: They would, if they hauled the business.

WITNESS: Then you find the Milwaukee down again at Kankakee, and they could make a continuous-mileage rate. I don't know what those rates are, we haven't figured them out, but those roads said that they were going to make a maximum of $1.48 to some of those junction-points in there, which makes our rates from Chicago.

Q. Then isn't it a fact that the principal thing upon which you claim that there would be a loss on Minnesota interstate traffic is that you feel in order to carry any considerable amount of hard coal you must have your Milwaukee and Chicago rates no higher than the rates from Duluth to the same points?

A. Well, yes; the rates being fixed from Duluth to a certain point, fixes the rates *via* other roads from Manitowoc, Milwaukee and Chicago, and we have to meet those rates or go out of the business altogether, and we feel it necessary to meet that competition.

Q. Do you know how much traffic in this item, or how many tons in this item, "Minnesota interstate traffic," was a Superior haul?

A. I do not remember. I looked that over, but I can get those figures. I have them in my office; I have them where I can get at them.

Q. I wish you would get those.

A. You want those figures?

Q. We are talking now about the item Minnesota interstate traffic in hard coal—

A. That is item 2.

Q. —on which you have figured a loss of $3,273.95. Now, I would like to know the tonnage upon which you figured that loss and from what points; that is, the amount of tonnage from each point.

A. I can get that for you tomorrow morning, I am quite sure.

Q. Now, we will take the item on Exhibit 14 under the head of "Hard Coal, other interstate traffic." That is interstate traffic which never touches the state of Minnesota at all?

A. Yes.

Q. But is hauled by your lines entirely outside of Minnesota but between states?

A. Yes.

Q. Now, will you explain just how you figured out your result of a loss of $286.83 on that sort of traffic during the period covered by Exhibit 14 upon the basis of the proposed statutory rates? I mean upon the basis that the proposed statutory rates would apply in Minnesota to shipments beginning and ending in the state only.

A. Well, as a result of the $1.48 rate from Duluth to Lafayette, Minnesota, for instance,—

Q. Where is Lafayette?

A. Lafayette is near New Ulm, south of Windom,—our rate would be, from Duluth to Lafayette, $1.75 as against $2.05. That would make the rate from Chicago $1.75 to Lafayette and Dunnell (points on that line south) and they would not strike

our road in Minnesota at all or go through the state of Minnesota at all; and based upon tonnage of that sort, we take the difference and arrive at the loss of $286.83. I can give you the exact examples in the morning, I think.

Q. Well, I would like those in the morning, but we would like to understand the method now. Do I understand that you figure, in arriving at this loss, that if the commodity-rate act were in force, the rate from Duluth to Lafayette—

A. Yes.

Q. —which, under existing tariffs, was $2.05,—

A. Yes.

Q. —would be reduced to $1.75 a ton?

A. To $1.75.

Q. And that that reduction would be also made at Dunnell, would be the same figure to Dunnell?

A. The rate to Dunnell would be $1.99 as against $2.15; and at Lafayette would be $1.75 as against $2.05.

Q. That is to say, under the tariff rates as they existed at the period covered by Exhibit 14, the rate for hard coal from Duluth to Lafayette on your line was $2.05, and on your line the rate from Duluth to Dunnell was $2.15; if the commodity-rate act were made effective, then you would change your rate from Duluth to Lafayette to $1.75?

A. Yes.

Q. And from Duluth to Dunnell to $1.99?

A. Yes; and those rates would apply from Chicago and Milwaukee and Manitowoc to those same stations, but would not go through the state of Minnesota in any way, so that the difference between those rates multiplied with the tonnage would give the reduction.

Q. Well, first we will see how you get your reduction from $2.05 to $1.75 and from $2.15 to $1.99. How would you arrive at that reduction in putting into effect the commodity-rate act?

A. In the first place, the rate of the Northwestern road

would be $1.75 to New Ulm from Duluth. We don't make the rates from Duluth; we don't have anything to do with making the rates. The rates are fixed for us to our junction-points, and we go into a meeting and those are the figures we have checked in and we don't know the reason why.

Q. Well, where would be the junction-point for Lafayette on hard coal from Duluth?

A. We would get that at Minneapolis or Minnesota Transfer.

Q. And you would pay a dollar for it there?

A. We would pay a dollar.

Q. And how far would the haul be then from Minnesota Transfer to Lafayette?

A. Seventy-nine miles.

Mr. BUTLER: What do you mean by saying you paid a dollar for it there?

Mr. DURMENT: They would pay the line which carried it from Duluth to Minneapolis or Minnesota Transfer a dollar.

Mr. BUTLER: Well, that is a division of a through rate?

Mr. DURMENT: Yes.

Mr. BUTLER: But they don't haul any local for a dollar?

Q. Well, as a matter of fact, during that period covered by Exhibit 14, of the joint rates on hard coal from Duluth to any points on your line, where the coal was delivered to you at Minneapolis, you paid the road hauling from Duluth to Minneapolis its proportion of one dollar a ton on hard coal?

A. Yes.

Mr. BUTLER: That wasn't the same as the local rate from Duluth to Minneapolis?

Mr. DURMENT: Not at all.

Mr. BUTLER: That was $1.25?

Mr. DURMENT: Yes.

WITNESS: Yes, this one dollar is our proportion of these

rates—is the proportion of the foreign line of these rates that we are talking about.

Q. Now, you say you would have to meet $1.75 for the haul from Duluth to Lafayette, and out of that you have allowed $1 to the road making the haul to Minneapolis from Duluth?

A. Yes.

Q. Which would have given you 75 cents?

A. Yes.

Q. Yet I notice that, from Minneapolis or Minnesota Transfer to Lafayette, under the commodity-rate act, you would have been entitled to charge 93 cents a ton.

A. I presume that is true.

Q. Then if you had added the commodity rate (that is, the rate provided by the commodity act) to that which you were required to pay the road for hauling from Duluth to Minneapolis, it would have made $1.93 for a haul from Duluth to Lafayette?

A. We could have done that.

Q. Then why didn't you do that, or why wouldn't you do that instead of making a rate of $1.75?

A. Well, the Omaha road makes a direct rate from Duluth to St. James, Minnesota, of $1.75. Now, we run into St. James, and competition fixes that rate. Then we haul to New Ulm, and we haul St. James business through Lafayette and through New Ulm; that fixes our $1.75 rate there. We meet the Omaha rate at St. James; that fixes our rate clear up to Winthrop and possibly east of Winthrop. Competition fixes all of those rates, Mr. Durment, and we simply check, we check in the junction-points and then do the best we can to get as much as we can back from there, but we always want to give our people (the people on our road) as good rates in all of that territory as other roads do give their stations in territory near to it. That is, Lafayette would check against all roads in contiguous territory around there, which would be $1.75.

Now, if we should put in a $1.93, our price on hard coal would be higher there, and people would drive over to the other stations and get their coal. A very small change in a coal-rate will induce a man with his team and wagon to go a long distance for coal.

Q. That is hard coal you mean?

A. Hard coal or any other kind of coal, but we are speaking of hard coal.

Q. Now, what did you mean when you said that you didn't fix the rates, that you simply "checked" them in to the junction-points?

A. Well, the rate is made, for instance, by the Omaha road from Duluth or Superior to St. James, Minnesota.

Q. That is, where it connects with your road, is it?

A. Well, they cross there. That is a point, and their rate there would be $1.75. That would fix our rate, no matter what our distance, if we were in competition for that business; and it would fix our rates, then, from Chicago and Milwaukee from the other tariff.

Q. Then upon what basis would you make your rates between junction-points upon your line?

A. Well, the rate to New Ulm would be $1.75.

Q. Now, how far is that from Lafayette? or from St. James, I should say.

A. The distance between New Ulm and St. James is twenty-six miles.

Q. The $1.75, the rate which the Omaha would make on hard coal to St. James, would fix your rate from Duluth to St. James, you say?

A. Yes.

Q. How did you know the Omaha would make that rate?

A. Well, we were at the meeting in which they said they would make the rates. The rates were checked in.

Q. And that would be from Superior?

A. As well as Duluth.

Q. And it would have a direct line from Duluth to St. James, would it?

A. Yes.

Q. So that, upon hauls from Duluth to St. James, the statute would apply to the Omaha road?

A. No.

Mr. BUTLER: No, that is interstate either way.

Mr. DURMENT: From Duluth wouldn't be.

Mr. BUTLER: Yes, because they run through Wisconsin.

Mr. DURMENT: Well, has the Supreme Court got around to the fact where the mere fact—

Mr. BUTLER: The Supreme Court of Minnesota always held that, and the Supreme Court of the United States has recently agreed with them.

Mr. DURMENT: They used to hold the other way.

Mr. BUTLER: The Supreme Court of Minnesota, with respect to that very line, held it was interstate, twenty years ago, but the Supreme Court of the United States held a different doctrine until about two years ago, when they came around to the view of our court. There is no doubt about that.

Mr. DURMENT: I would like to have that appear—

Mr. BUTLER: That makes the Great Northern interstate, too, from Duluth to the Twin Cities.

Mr. O'BRIEN: The Northern Pacific is the only road—

Q. Then the Omaha road, as I understand now, from counsel for the Complainant (and former counsel for the Omaha) would not have a direct line from Duluth to St. James which would be controlled by the commodity-rate act?

A. No.

Q. And the $1.75 rate from Duluth or Superior to St. James over the Omaha would be an interstate rate?

A. Interstate.

Q. And you were informed that that was the rate that they would make?

A. That was the rate that was checked.

Q. In case the Minnesota commodity rate law became effective?

A. Yes.

Q. And to meet that competition at that point you put in a rate of $1.75 from Duluth to St. James?

A. We intended to put in a rate of $1.75.

Q. And I suppose at that meeting where that rate of $1.75 was made it was also still understood that the road hauling to Minneapolis, from which you would get it at Minneapolis, would get $1 out of the rate?

A. That was my understanding.

Q. Now, is there any point on your line west of Lafayette which is another junction-point with the Omaha road in the state of Minnesota?

A. I don't know. After you get over to Hanley Falls, you get the Great Northern and you get the Northwestern competition over at Redwood; I don't remember just how those rates figure.

Q. But there is no junction, no place where the Omaha road crosses your road or touches it west of Lafayette?

A. No.

Q. In the state of Minnesota?

A. No, not west of Lafayette.

Q. Lafayette is just south of the main line of the Minneapolis & St. Louis, running out to LeBeau?

A. Yes.

Q. And near the place where the Storm Lake branch of your road connects with the main line at Winthrop?

A. First station below.

Q. Is there any point in Minnesota west of Winthrop or Lafayette where the Omaha, or any other road, having a direct line from Duluth or Superior, would cross the Minneapolis & St. Louis?

A. Well, the Great Northern at Hanley Falls.

Q. That crosses the Minneapolis & St. Louis?

A. Yes.

Q. And what rate did it make, or say it would make, on hard coal from Duluth or Superior to Hanley Falls?

A. A $1.87-rate as against $2.05.

Q. Was there any other road which had a direct connection with Duluth or Superior which connected with or crossed your line in Minnesota west of Hanley Falls?

A. No, not in Minnesota.

Q. Now, was there any other line than the Omaha which crossed or connected with the Storm Lake branch of the road south of Lafayette which had a direct connection with Superior or Duluth?

A. The C. M. & St. P.

Q. And at what point?

A. Sherburne.

Q. That had a direct connection with Duluth and with Superior?

A. Yes, sir.

Q. On its own line?

A. Yes.

Q. What was the rate on hard coal?

A. To Norwood, Iowa—

Q. I am speaking of Minnesota. What was the rate on hard coal made to that point when it was thought the commodity act would become effective?

A. $1.99 as against $2.15.

Q. And that would be an interstate haul?

A. No, that wouldn't be an interstate haul. That is a haul over the Northern Pacific. I don't know whether they consider the Northern Pacific an interstate haul or not.

Q. Well, it can be or can't.

Mr. BUTLER: They do not, as a matter of fact. Isn't there

some arrangement with the Northern Pacific?

WITNESS: I think so. Is the Northern Pacific considered an interstate haul?

Commissioner STAPLES: It is not interstate.

WITNESS: That is what I thought. Then the rate from Duluth to Sherburne over the Milwaukee would not be an interstate rate. It is 330 miles.

Q. That would be over the Northern Pacific tracks from Duluth to St. Paul, or from some other point south of Duluth, then over the Milwaukee; that would be an entirely interstate haul.

A. Entirely a state haul, 330 miles.

Q. Now, there is no other point on your lines in Minnesota, no junction-points such as you have mentioned, where coal would be hauled direct from Duluth or Superior to meet your lines except those you have mentioned, Lafayette, Hanley Falls, Sherburne, and St. James, are there?

A. St. James and Sherburne are the only points except New Ulm.

Q. Has that a direct connection with—

A. That has a direct connection with the Omaha, you know. I don't know whether they make continuous-mileage rates with each other or not. I find that the rate checked in to New Ulm would be $1.75, the same as at Lafayette. Then Redwood Falls is rated, under our stations on the Northwestern road, on a branch, and the rate they had checked in there was $1.72 on hard coal. I don't know how they arrived at it.

Q. This question covered your line in Minnesota.

A. From Minneapolis on the Albert Lea line we have junction-points at Waseca, with the Northwestern road,—

Q. That would give a direct connection with Superior and Duluth over what road?

A. Over the Omaha and the Northwestern; and Waterville, on the Great Western. I presume that they have joint rates.

Q. Well, you presume; you don't know?

A. It doesn't run to the Head of the Lakes. Montgomery would be a point that would be entirely within the state, on the Milwaukee road, where the rate would be changed.

Q. Let us see about Montgomery. Is that on your line?

A. Yes, and that is on the Milwaukee road. That is here, (indicating).

Q. What are the rates on hard coal made at these points that you have mentioned on the other lines, Montgomery, Waterville, Waseca?

A. Well, then, there are the junction-points at Chaska and Merriam, farther up. The proposed rate there from Duluth would be $1.48 on the other lines—

Q. To what point?

A. Say to Montgomery—as against $1.95 previously.

Q. And to Waterville?

A. To Waterville we checked in $1.78 as against $2,—No, $1.48; $1.48 to Waseca, Waterville and Albert Lea, those three junctions. You see Albert Lea would be a junction with the Milwaukee,—all within the state.

Q. And at Merriam and Chaska?

A. Yes.

Q. What were the rates?

A. $1.48 was checked in.

Q. And the old rate was what?

A. The old rate at Chaska was $1.75 and at Merriam $1.80.

Q. And that was checked in at $1.48?

A. Yes.

Q. Now, do you know why these rates were put in at junction points by these other roads for their intertsate hauls?

A. I think that the entire-state haul fixed the rate (for instance, at Montgomery and Sherburne), fixed it at individual points, so that competition fixed the balance. Now, that is as I remember it.

Q. As you remember it, then, the entire-state haul and interstate haul and intrastate haul from Duluth and Superior to these points or nearby points, fixed the rate?

A. Yes.

Q. And then they fixed the interstate rate to meet that?

A. The interstate rate, wherever there was any reduction made in that rate, it was applied to every interstate rate from all coal-shipping points, just the exact reduction, as I remember it.

Q. That is, if the statute compelled a reduction between Duluth and any point on a line, that made a similar reduction between all points along the line between them and Chicago?

A. That is it.

Q. And your rates then had to be fixed, you say, among other things, with reference to the rates prevailing at these junction-points?

A. Yes, sir.

Q. Now, what other condition was there, if any, that influenced you in making your rates?

A. Well, take, for instance, the rate from Duluth to Chaska, $1.48. The same rate ($1.48) was made from Chicago to Chaska. Now, as a matter of fact, the rate from Duluth to Albert Lea might be $1.78 under this statute as against $2, but as we reached the Chicago traffic to these $1.78 points, it pulled down the $1.78 rate to $1.48; so with all stations from Mulfords to Albert Lea, and we checked in $1.48 as against $2.

Q. That is to say that you figured to keep your field at these places open to competition between the Chicago end and the Duluth end?

A. Yes, we kept all avenues open, just as previously.

Q. So that shippers from Illinois or Chicago could have the same rate on hard coal into your territory at Albert Lea and at the points you have mentioned as they would have from Duluth to those points?

A. That is it.

Q. You spoke somewhere about there being a parallel line at nearby points fixing your rates.

A. Take the Milwaukee line that runs out to Norwood. Norwood would be a junction-point with our road and the mileage of the Milwaukee road from Duluth to Norwood is all within the state. We would meet the rate at Norwood. Then you follow the Milwaukee road out to Granite Falls—this map does not show the stations, but it would parallel our road from Norwood out to Hanley Falls.

Q. That is, you mean it would reach the same stations?

A. No, it travels the same country, just about at an average, I should say, of twelve or fourteen miles between, and the short mileage would be from Duluth to those points in Minnesota. Now, under our method of figuring, we always checked in the same rate at our points along the Winthrop line that they have along their Granite Falls line. That is, stations just opposite each other have exactly the same rates checked in.

Mr. BUTLER: Illustrate by naming a few.

Q. For fear, I suppose, that those who want freight at a point on your line would haul it the fourteen miles to avoid the difference?

A. Well, it is not that so much as it is that when the farmer finds out that he can get his coal at a point on the Milwaukee road just opposite him, supposing he is midway between the roads or near the Milwaukee, he finds out that coal is sold for ten or fifteen cents a ton less on the Milwaukee road, he will take his carload of wheat or corn over there, getting the same price he would with us, but he saves the ten or fifteen cents a ton on coal, and we find that we have to watch that very closely, and I can give you some of the stations: For instance, Brownton would check against Winthrop, Stewart and Gibbon would check against each other, Buffalo Lake and Hector and Fairfax would probably check against each other; then Franklin and

Morton as against Bird Island.

The MASTER: How far apart are those two roads you are referring to?

WITNESS: I think they are from twelve to fourteen miles, your Honor. The Milwaukee have the shorter mileage from Duluth to their points. For instance, take Hector, on the Milwaukee road, the distance from Duluth to Hector is 242 miles; to Fairfax, on our road, is 250 miles; and at Bird Island the distance from Duluth is 251 miles and to Morton it is 264 miles. The distance is a little greater to our stations from Duluth than to the Milwaukee's, but the question of checking the same rates in as between those two lines is one that has been in fashion on the two roads for a great many years.

Q. Can you yourself now give us the intrastate haul or hauls which under the commodity-rate act would have required these reductions from Duluth to the various junction-points you have mentioned?

A. I haven't that data, I can get it in the morning.

Q. We will ask you to furnish us that. Will you?

A. Yes.

Mr. BUTLER: What is it?

Mr. DURMENT: It appears from the testimony of the witness that at each of these junction-points he has mentioned, there was a rate fixed which would have been put into effect at that particular junction-point between Duluth and the junction-point in case the commodity act had gone into effect. He also testified that, as he understood it, that rate as to each junction-point was determined by the intrastate haul from Duluth to that point or a point near to it.

WITNESS: In other words, it all hinges on the rate from Duluth to some point, and whatever that reduction is is applied to all points. Now, I can get that.

Q. And that rate is an intrastate rate?

A. Yes.

Q. Now, you said that the rate being fixed to Dunnell from Duluth would compel a change in other rates in traffic that did not touch the state of Minnesota at all, as I understand it. How would that be?

A. Well, for instance, the rate from Duluth down over the Milwaukee road to Sherburne (all within the state of Minnesota) 330 miles, would be $1.99 under the statute. Now, the previous rate would be $2.15. There would be a reduction of 16 cents per ton. Now, that fixes the rate from Chicago, Milwaukee, Peoria, Manitowoc, and all those points up through the other junctions to Dunnell. Dunnell is in Minnesota. Now, a point below Dunnell, take Estherville, Iowa, and Huntington, Iowa, the rate would be reduced from $2.15 to $1.99.

Q. Why?

A. Because the theory and practice of competition and experience has made the rates from all of those points—the lake Michigan ports, if you will—the same as the rates from Lake Superior, or a certain relation between the two. They are usually exactly the same, and, I think, in every case, the same, although there may be some variance. I can get the exact cases.

Q. But we are talking now of cases where the coal would never touch the state of Minnesota at all.

A. Well, Huntington would not touch the state of Minnesota, it would go by another route entirely, and your rate out from Milwaukee through Corwith, Iowa, to the M. & St. L.,—here is say your rate from Duluth to Spencer, Iowa, on the Milwaukee road, that is a good case, let us see what that would be. (Witness examines tariff-sheet.) At Spencer, Iowa, the rate is not changed. I do not find on this tariff a case of that kind and I will have to get you the cases out of my files that make up the $286 loss.

Adjourned until the morning of Tuesday, August 18th.

FEDERAL BUILDING, St. Paul, Minn., August 18, 1908, the hearing was resumed at 10 o'clock A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified.

By Mr. DURMENT:

Q. Mr. Tittemore, you stated yesterday afternoon that this morning you would be able to give us the local haul which would have fixed the prices for transportation of hard coal at the junction points of the Minneapolis & St. Louis line with other lines in Minnesota, in case the commodity-rate act had been put into effect. Will you give us the local haul which would have fixed that rate as to each of the junction-points you mentioned yesterday?

A. I think I have them all on this paper; I am going to take them one at a time. But I want to say that, yesterday, in your question, you asked me as to the method of figuring the computations in Scott's Exhibit 14,—I find my method as explained yesterday correct, but some of the figures incorrect, which will be corrected in my answer to your question now. For instance, I stated that the Omaha road fixed a rate at St. James which we met. I do not find that the Omaha road did state what their rate at St. James would be, and it is not fixed by that method but by another which I will explain as I go from point to point. For instance, the distance from Duluth to Montgomery, Minnesota, *via* the Milwaukee road, is 206 miles, and the new rate (the statute rate) for that distance would be $1.48, and that is the rate that was checked in and the rate that we would be supposed to meet.

Mr. BUTLER: On hard coal?

WITNESS: On hard coal.

Q. At Montgomery?

A. At Montgomery.

Q. And that haul from Duluth to Montgomery by the Mil-

waukee road of 206 miles, would be over what lines?

A. Over the C. M. & St. P. line from Duluth to Montgomery.

Q. Has the C. M. & St. P. road a line into Duluth?

A. I think they have, yes.

Q. Do you mean a separate and distinct line, or do you mean its right to use the Northern Pacific line into Duluth?

A. Of course our rates, being fixed upon competition, we listen to their statement in meetings, which is to this effect: That they have the same rights from Duluth into our territory or into that territory that they would have if they owned their own rails. We take their word for that.

Q. Do you know whether that haul of the Milwaukee road from Duluth to Montgomery is a haul entirely within the state of Minnesota?

A. They said that they would treat it in that way, because—

Q. Well, that isn't the question, what they would treat it; they would have to treat it according to the law if the law were in force.

A. Well, they said it was within the state.

Q. Well, do you know?

A. I do not.

Q. Do you know what lines they travel over, or what the course of the line is?

A. I do.

Q. Well, what is it?

A. It is over the Northern Pacific road from St. Paul or from Minnesota Transfer.

Q. To Duluth?

A. To Duluth.

Q. You don't know of your own knowledge, what arrangement, if any, they have for the hauling of the trains over?

A. Not of my own knowledge, except as I get it from the newspapers.

Q. Well, that is one.

Mr. BUTLER: He didn't state the old rate.

WITNESS: Well, I have all my computations here complete, but—

Mr. DURMENT: I think he has stated the old rate before.

Mr. BUTLER: Let him make each instance all complete as he goes along.

Q. What was the old rate?

A. The old rate from Duluth to Montgomery would be $1.95.

Q. That is on your line?

A. On any line. Our line would be $1.95, or by the Milwaukee would be $1.95.

Q. Well, with reference to your own.

A. Our own rate would be $1.95, Mr. Durment. Now, the difference there in reduction would be 47 cents per ton. I find that we figured, in Scott's Exhibit 14, in item 2, (in the hard-coal item) that from Superior, Wisconsin, 401,880 pounds of hard coal had been shipped to Montgomery; that is, 200.94 tons; at 47 cents off would make $94.44 loss.

Q. You now are talking of Minnesota interstate traffic, are you?

A. Yes. You asked what—

Q. No, that isn't the point; I asked you to give me the local hauls at the various junction-points which would compel you, or according to which you would fix your prices for interstate hauls in case the commodity-rate act were in effect.

A. That is what I have done, exactly. That is just what I am doing.

Q. I am only asking you, in the first instance, to give me the local haul to Montgomery. You have given that. Now, you have gone on and given some more, of your own volition, which I have no objection to but I simply want to know how you are bringing it in.

A. Now, the Milwaukee's mileage from Duluth to Albert Lea—

Q. Now, then, let us finish with Montgomery, first. I am not through with that. You treated, then, for the purpose of getting the amount of loss which would have resulted on Minnesota interstate hauls of hard coal, during the period covered by Exhibit 14, Superior and Duluth as one, at the same rate?

A. I made any rate from Superior that would be made from Duluth, and figured that into Scott's Exhibit 14.

Q. Yes, but did your road itself have arrangements by which it would haul through from Duluth or Superior to Montgomery, or would you have to take it from other roads at other points?

A. Well, while we have those arrangements, we have an arrangement with other roads for hauling coal on to our road from Duluth; but when we speak of Duluth our tariff reads Duluth, Ashland and Superior (as I explained yesterday), and Ashland and Superior are in Wisconsin, and I find a great deal of our coal comes from those points. I find in figuring Scott's Exhibit 14 that quite a tonnage of coal comes from Ashland, Wisconsin, *via* the Wisconsin Central, clear down through Abbottsford, Wisconsin, in on to our road. That is hard coal I am speaking of.

Q. And those will come out later.

A. In Scott's Exhibit 14, they all figure there.

Q. But there is no through rate, that is, no contract made with your Company, and no delivery of the coal to your Company at Duluth or Superior to be transported to Montgomery?

A. No.

Q. It is hauled out of there under contract with other roads and delivered to your road at what point?

A. Under an arrangement with our road and delivered to our road at Minnesota Transfer.

Q. And you take it from the other roads at Minnesota Transfer, and then take the through rate less $1 per ton?

A. On hard coal, yes, $1 per ton.

Q. Now, does that Montgomery rate, the rate from Duluth to Montgomery, which the Milwaukee makes, fix the rate on hard coal from any other point than Duluth?

A. It fixes the rate from Duluth to Montgomery, fixes the hard-coal rate, as I have stated, from Ashland and from Superior, Wisconsin; also from Milwaukee, Sheboygan, Wisconsin, and Green Bay, Wisconsin, and from all Lake Michigan ports, —Chicago.

Mr. BUTLER: Does that include Manitowoc and Gladstone?

WITNESS: It includes Gladstone and Manitowoc, but those roads sometimes make the exact Duluth rate from Manitowoc or from Gladstone to Minneapolis, whereas the exact Duluth rate would not apply from all other Lake Michigan ports, although there would be a relation between the two which is recognized. Let me see, I am not sure as to that on hard coal; that is, whether the Wisconsin Central and the Soo Line make the same Duluth rate on hard coal as they do on soft. I haven't seen their tariffs, but I understand they do. I had seen their tariffs on soft coal.

Q. Take the coal from Superior that would be delivered to your road for Montgomery, would that be hauled by the Milwaukee road and delivered to you at the Transfer?

A. No.

Q. How would that reach your road?

A. Well, we wouldn't take any coal from the Milwaukee road coming from Duluth; they would haul it from Duluth direct to Montgomery over their own rails.

Q. Well, I misspoke myself there. That is, in what way or by what route would the coal which comes from Superior to your road for Montgomery reach your road?

A. Well, over the Great Northern, or from the Great Northern, or from the Northern Pacific, or from the Omaha roads. I think we have tariffs with all of them.

Q. If it came over the Omaha, the larger part of the haul would be through Wisconsin, wouldn't it, or would it?

A. It would, I think.

Q. I mean the larger part of the haul over the Omaha road would be in Wisconsin?

A. Yes.

Q. The larger part of the haul would be in Minnesota between your road and Superior if it came over the Great Northern, would it not, from Superior?

A. There wouldn't be a larger part of the haul in Wisconsin, but some of the haul would be there. The larger part would be in Minnesota, yes.

Q. Take the coal which would come from Ashland to your road for Montgomery, how would that reach your road?

A. It could reach our road directly over the same line that we have described when it comes over the Omaha road, but it can come to us and does come to us, I find, over the Wisconsin Central road, which would make a large majority of the haul in the state of Wisconsin. You asked about Ashland?

Q. Yes.

A. Yes.

Q. Coming over the Wisconsin Central to your road, how much longer haul would it be from Ashland to Montgomery than it would be from Duluth to Montgomery over the Great Northern?

A. I didn't figure that out. It is considerably longer.

Q. Then the length of haul had nothing to do in that case with the rate?

A. With the division of the rate?

Q. No, with the rate itself.

A. No; I should think competition fixed that rate.

Q. And as to the division of the rate of $1.48 or $1.95 (as it was) between your road and the roads which hauled from the lake ports, Duluth, Superior and Ashland, the length of haul

would have nothing to do with that, or would it?

A. It has not been figured in. I am not sure that the Wisconsin Central get or demand $1. I think they do, Mr. Durment, but I am not sure; but, in any event, distance is not considered in the division.

Q. It is an arbitrary?

A. It is an abritrary division.

Q. Have you the tonnage of hard coal from Ashland and Superior to Montgomery at hand? You seem to have it from Duluth.

A. No; the item that I used there was from Superior to Montgomery, but I don't know that that is the entire tonnage.

Q. That was simply an illustrative case?

A. Yes, but an actual case that is in Scott's Exhibit 14.

Q. But it was not intended to give—

A. The entire tonnage.

Q. —the entire tonnage from that point?

A. No, to Montgomery.

Q. Yes, Montgomery. I meant from Duluth to Montgomery.

Mr. BUTLER: From Superior?

Mr. DURMENT: Yes, from Superior to Montgomery.

WITNESS: You have asked for another tonnage statement from Superior which I am preparing and will have for you this afternoon.

Q. Now, then, the next local haul to any junction-point in Minnesota which would have fixed interstate rates for your road if the commodity-rate act had gone into effect?

A. The next example?

Q. Yes, the next local rate.

A. The next local rate would be from Duluth to Albert Lea. The distance from Duluth to Albert Lea *via* the Milwaukee road is 271 miles, which fixes a rate under the statute of $1.78. The old rate was $2. That leaves a 22-cent difference. Now, yes-

terday I testified to the fact, if you will remember, that our Montgomery business being pulled through Albert Lea would reduce the Albert Lea rate to $1.48, the Montgomery basis. Now, I found in figuring it over that this was my judgment when I authorized those figures; I thought I found where we would not be compelled to reduce the Albert Lea rate. I think we will. But I thought that we would not. Therefore, I did not figure on the full reduction of 47 cents, but figured on the exact reduction of 22 cents. I could have figured, and think eventually the figure will prove, that we would have to reduce the rate 47 cents, but I found that we might not have to reduce it, therefore I used 22 cents. Now, from Superior, Wisconsin, I find that we received 136,460 pounds of hard coal for Albert Lea during that period of time or sixty-eight and a quarter tons. At 22 cents would give a reduction, under the old rate of $2, or $15.01 or 22 cents a ton under the exact tonnage.

Q. Now, the Milwaukee road has a direct line from Duluth to Albert Lea wholly within the state of Minnesota, under the same arrangement (whatever it is) with the Northern Pacific, I suppose?

A. That is as I understand it, Mr. Durment.

Q. And that is the local, you say, which would fix the rate on hard coal from Duluth to Albert Lea?

A. That would fix the rate as I have figured it.

Q. And you also figure, as I understand it, that it would also fix the rate on interstate hauls from Superior and Ashland to Albert Lea in the same way.

A. Yes, sir, and from other Lake Michigan ports, as I have described in the Montgomery case.

Q. Your road would get its hard coal for Albert Lea at what point and from what lines, where it comes from Duluth, Ashland or Superior?

A. From the same lines that we would get the Montgomery haul; that is, from the Northern Pacific and the Great North-

ern and the Omaha and the Wisconsin Central.

Q. And you would take it from those roads at what points where it is for Albert Lea?

A. I think it would all come to us at Minnesota Transfer.

Q. Now, the tonnage you have spoken of as from Superior to Albert Lea, during the period covered by Exhibit 14,—was that the entire tonnage during that period which your road hauled from Superior to Albert Lea, or is that simply one incident?

A. This is a case that is figured in Scott's Exhibit 14, but may not be all of the coal from Superior to Albert Lea during that time; simply an exact case showing the exact method and the exact computation.

Q. Now, let us take the next junction-point.

A. Well, take the Great Northern distance from Duluth to Hanley Falls, a junction with our road. Here is the line (indicating course of road on Minnesota Railroad map) to Hanley Falls. This is our line here.

The MASTER: Suppose you mention that line by two or three places so that we can get it by the places; that is, mention two or three points in the line.

WITNESS: From Duluth, passing through Hinckley, Minnesota, Milaca, St. Cloud, Paynesville, Willmar and Granite Falls to Hanley Falls.

The MASTER: Now on your road.

WITNESS: Our road would pass from Minnesota Transfer through Norwood, Winthrop, Redwood, and out to Hanley Falls. The distance from Duluth to Hanley Falls *via* the Great Northern road is 243 miles, and the new rate, the statute rate, would be $1.87 per net ton on hard coal; the old rate, $2.05.

Q. But the Great Northern has no line from Duluth to Hanley Falls entirely within the state of Minnesota, has it?

A. I think not. They didn't state that at the meeting;

they stated that they would treat it as a haul within the state.

Q. But, as a matter of fact, their line from Duluth comes around through Wisconsin and down to Hanley Falls?

A. I think there is some mileage in Wisconsin.

Q. You don't know how much nor where it crosses?

A. Well, no—I know where it crosses by looking at the map.

Q. Of course, but then you don't remember, yourself?

A. No, but the fact of the matter is, the mileage of the Milwaukee railroad I *think,* from Duluth to Granite Falls fixes the rate from Duluth to Hanley Falls over the Great Northern, and in this meeting that I testified about yesterday the Great Northern stated (and this is about the language) that they would have to give their people along their line the advantage of the statute rates in competition with these other roads.

Q. And for that reason you fixed your rate at Hanley Falls at $1.87, the same as the Great Northern mileage from Duluth through Wisconsin down to Hanley Falls would be? I mean, the same as the rate which the Great Northern was going to make from Superior or from Duluth to Hanley Falls.

A. That is the way it is figured in Scott's Exhibit 14.

Q. The Great Northern does have a roundabout line wholly within the state of Minnesota, doesn't it, to Hanley Falls?

Mr. BUTLER: The map shows you could go away out on the Fosston branch and then get down in some way.

WITNESS: I don't know about that, but it would not be practicable or feasible to use the route.

Mr. YOUNG: No traffic runs over that?

WITNESS: No.

Q. Now, you would get your coal for Hanley Falls (that is, hard coal) that would come from Duluth, Superior or Ashland from what roads and at what place?

A. Well, we would get our hard coal for Hanley Falls from Duluth, Minnesota, and Superior and Ashland, Wisconsin, and

we would receive it from the Northern Pacific, Great Northern or Omaha and Wisconsin Central roads at Minnesota Transfer, but we would also get coal from other Lake Michigan ports, but we would take it from those roads I have mentioned at Minnesota Transfer from those northern Superior ports.

Mr. BUTLER: Would the Great Northern make a through tariff with you from Duluth to Hanley Falls? Have they, do you know?

WITNESS: I think they might; I don't know that they do. We don't haul any business; they wouldn't give us that business, and the figures in Scott's Exhibit 14, I notice,—I don't think any of the freight, any of the coal comes to us from the Great Northern for Hanley Falls. I have one case where it came to us from the Northern Pacific at the Transfer; the car contained 15.4 tons, and I figured the reduction 18 cents, which left a loss of $2.77.

Q. Then these prices—

A. Now that Mr. Butler asked that question, let me clear that up. I find that we have Great Northern Railway G. F. O. No. 16368, dated effective October 14, 1905, which does make rates on hard coal from Duluth, Superior, Ashland, Itasca and Sherburne, Wisconsin, the same as it would be made over the other roads.

Q. I notice there you have got coal from the Northern Pacific at fifteen and a half tons, that would be less than a carload?

A. No, that is one of the small cars of the Great Northern road, no doubt, where they make the minimum and maximum capacity of the car. I find that that car contains, for instance, 30,800 pounds; that would be one of their light cars and would be a minimum load but would take the carload rate and is so figured.

Q. Are these figures that we are talking about on hard coal for carload-lot rates?

A. Ah, yes.

Q. Now, as to the other Lake Michigan ports, Milwaukee and Manitowoc, hard coal comes from there?

A. Hard coal comes from Manitowoc, Green Bay, Sheboygan, Gladstone, Chicago and Milwaukee.

Q. You receive coal from all of those roads and all those points for the territory at Hanley Falls?

A. Yes; we have our road—

Mr. BUTLER: You mean the line running out there?

Mr. DURMENT: Yes.

WITNESS: We have our road open to all of those ports.

Q. And in those cases, where would you get your hard coal, where would they deliver it to your road?

A. Do you mean for Hanley Falls?

Q. Yes.

A. Well, I think in the case of the Northwestern that they would haul it across from Manitowoc or Sheboygan or Green Bay, Wisconsin, or the Milwaukee road would from Green Bay to our line, and deliver it to us at some interior Minnesota junction. In the case of a shipment from Sheboygan to Hanley Falls, the Northwestern would deliver it to us at Waseca. I think the tariffs read that way. In the case of the Milwaukee to Hanley Falls I think they deliver it to us at Minnesota Transfer, possibly at Albert Lea; I don't recall.

Q. And the Manitowoc and Milwaukee coal, where would that be delivered to your road?

A. If it came from the Northwestern road for Hanley Falls, it would be delivered at Waseca, I am quite sure; if it came by the Milwaukee road, possibly at Minnesota Transfer or Albert Lea.

Mr. BUTLER: The Wisconsin Central?

WITNESS: The Wisconsin Central would deliver to us at Minnesota Transfer.

Q. And the rate from these various points is the same, as

I understand it, on hard coal, as from Duluth, Superior and Ashland?

A. Generally speaking they are the same; but I find that for years we sometimes vary the hard-coal rate in a manner that we do not the soft-coal rate. We save as much as possible because hard coal is not used for manufacturing purposes, and all the details and items of competition don't work into the rating as it does in soft coal, so that I don't want to state that as an absolute fact, but it is generally so.

Q. Your rate on coal to Hanley Falls from these Lake Michigan points, would it be the same as from Duluth, Superior and Ashland?

A. I find that it would. I find that there would be a difference—Now, you are speaking of just Hanley Falls?

Q. Yes.

A. At Hanley Falls it would be the same.

Q. What portion of the through rate would you get on the coal from these Lake Michigan points other than Duluth, Ashland and Superior?

A. That is a percentage division. I told you that I would have the Milwaukee divisions here this morning. I found the divisions in fragmentary shape, and our new sheet is in the printer's hands, and I have brought a memorandum only of the coal divisions.

Q. Well, the coal divisions are all that we care about at this time.

A. I find that our divisions with the C. M. & St. P. road on hard coal (coal from Milwaukee, Wisconsin, say, and that would apply from Green Bay) to stations on the M. & St. L. railroad, Deep Haven to Watertown and Lafayette and from stations Klossner and New Ulm *via* Minnesota Transfer that the C. M. & St. P. gets $1 per net ton. That would include Hanley Falls. They would get $1 per ton the same as the other roads, but I don't think that that covers all of the points.

It covers all of the points that this memorandum covers, but we have some percentage arrangements that include hard coal.

Q. Now, on the other roads, (the Milwaukee is only one of several,) there is the Northwestern and there is the Wisconsin Central that deliver coal from these other Lake Michigan points?

A. The Wisconsin Central divisions are in dispute.

Q. We are speaking now of the date when this Exhibit 14 was made, you know.

A. I can't give you those divisions until afternoon, we are preparing them. Take in the case of the Northwestern—I refer to the M. & St. L. division sheet No. 228, in effect June 1, 1905—the divisions in this sheet apply to the business in Scott's Exhibit 14. That division sheet reads like this: "Between stations on the A. & W. Railway in Wisconsin, the G. B. & W. Railroad and the K. G. B. & W. Railroad, also stations in Illinois and Wisconsin on the C. & N. W. Railway south of the line of the G. B. & W. Railway, including Green Bay, New London, etc., and stations on the Minneapolis & St. Louis Railroad, Redwood, Minnesota, to Gardner, in South Dakota, when routed *via* Waseca," (that is, when it comes to us at Waseca,) "the division is fifty per cent or half the rate to each line on hard coal."

Q. In case of coal delivered to your road from those Lake Michigan ports in that way, your road would have the short haul, would it, or would it have the long haul?

Mr. BUTLER: Between what points?

Mr. DURMENT: I mean generally. I mean on that line, the haul of the other roads would be from the Lake Michigan ports to Waseca.

Mr. BUTLER: You mean they have less than half the mileage?

Mr. DURMENT: Yes.

Q. And your haul would be to Redwood and points beyond?

A. But we are speaking now of Manitowoc and the lower Michigan ports through Wisconsin to Hanley Falls, which is included in the division between Redwood Falls and Gardner, South Dakota; and I think that the mileage probably would be a little in our favor, the average mileage.

Q. A little shorter mileage?

A. I think our mileage might average a little shorter but I don't know how the average of the mileage would be as compared with the average tonnage.

Q. No, but the mere length of road, it would be about an equal haul, though perhaps shorter for your road?

A. A little shorter for our road, I should say, on the average. However, if you were to take mile for mile and just take Manitowoc and Sheboygan and Milwaukee, take our mileage clear to LeBeau and Leola and Storm Lake, we might have as much mileage as they would have; but when you take it that all of their tonnage runs from their points to Waseca and that with us the tonnage varies as to where its destination is, the average mileage for us might be less than their fixed mileage for them, that is what I mean to say.

Q. Now, let us have the local haul which fixes the rate for the next junction-point.

A. The mileage of the Milwaukee road from Duluth, Minnesota, *via* Minnesota Transfer, as I figure it, and from Minnesota Transfer to Sherburne, Minnesota,—the Sherburne distance is 305 miles according to this map (the state map) we figured it 330 miles when we put in our rate—the state rate would be $1.99. Yesterday I stated that the rate to St. James would be $1.75. I find that in my figures we figured that the Sherburne rate could be made at St. James, Minnesota, therefore the computations in Scott's Exhibit 14 are not figured on the basis of $1.75 but upon the basis of $1.99. We figured that we might get $2 even, but we figured at the exact figure. It is pretty hard to figure $1.99 in every case, but we figured it at

the exact distance for 330 miles. I find that the distance on this map is 305 miles, which would affect that rate and make the tariff lower, if this distance is correct. I don't know where we got our distance, but from the Milwaukee road, I suppose.

Q. You have not given us the old rate to Sherburne.

A. The old rate to Sherburne is $2.15 and the new rate would be $1.99. I do find that there was a tariff in force June 5, 1905, that made a rate of $2.25 instead of $2.15, so that if there would have been any actual shipments at the $2.25 rate they would appear also in Scott's Exhibit 14 on that basis instead of $2.15.

Q. That is a local haul made by the Milwaukee over the N. P. tracks from Duluth to Minnesota Transfer and then over its own line from there south to Sherburne?

A. That is as I understand it.

Q. And at what point would your road get coal for Sherburne which would come from Duluth, Superior and Ashland, and from what roads?

A. Well, we could get it from the Northern Pacific, the Great Northern and the Omaha and the Wisconsin Central.

Q. At what point?

A. At Minnesota Transfer, I think in every case.

Q. At what point would you get hard coal for Sherburne from the other Lake Michigan ports?

A. *Via* Minnesota Transfer and Waseca, and from Chicago we might get it through Estherville from the Rock Island; various junctions, I couldn't name them all now.

Q. And made the rate of $1.99 to be the same from all these points to Sherburne?

A. Yes, I think so. I made a qualification a while ago that in all instances we do not live up to that principle, but in that district we would, although it might be figured, if possible, on the $2 rate rather than the $1.99, for the reason that we would try to get that cent in there to help in figuring.

Q. The division for the coal received at Waseca on this $1.99 for Sherburne would be the same as in the others?

A. I think not. I will see. I now refer to M. & St. L. division-sheet No. 228, which divisions were used in figuring the computations in Scott's Exhibit 14. In the case of Lake Michigan port coal, for instance, from Milwaukee or Sheboygan (and I speak of Sheboygan because that is a very important point, I find,) it would travel over the Northwestern road. I am now reading from M. & St. L. tariff No. 1-A, and I find that Sherburne's index number is 123 and that hard coal shipments from Sheboygan and Green Bay and Milwaukee would come across the state of Wisconsin to Waseca and be delivered to the Minneapolis & St. Louis road at this point (indicating Waseca on the map) and it would yield our Company forty-five per cent, but I find in this division-sheet No. 228, that that same freight might be routed *via* Sioux Rapids, Iowa; that is, it might come up through Iowa. It would be delivered to us down in Iowa and come up over our road to Sherburne. Sioux Rapids is on the Northwestern road south of Sherburne and the Northwestern crosses our Storm Lake line at Sioux Rapids, Iowa, and that is the way that most of that hard coal would come, I think; we would get forty-five per cent for a comparatively short haul in the case of Sherburne.

Q. You would get forty-five per cent of the rate whichever way it came?

A. Whichever way it came.

Q. For that point?

A. Yes, sir, for Sherburne.

Q. By the way, referring again to the haul to Hanley Falls: You gave us the division of fifty per cent of the rate to your road and fifty per cent to the delivering road for coal delivered to your road at Waseca for points on your road at Redwood and beyond Redwood west—

A. To Gardner, South Dakota.

Q. To Gardner, South Dakota. Was there any division for coal to be delivered on your road at points east of Redwood?

A. Yes, we get coal for points east of Redwood.

Q. And where would that be delivered to your road, at Waseca or—

A. At Waseca when coming over the Northwestern road.

Q. And what would be the division on the coal which would be for points east of Redwood on your line?

A. On coal coming from the Northwestern Railroad to us at Waseca, Minnesota,—that is, from Lake Michigan ports over the Northwestern road to us at Waseca, Minnesota, when for stations Minnetonka Mills, (that is just outside of Minneapolis) to Morton, Minnesota, that group would give us forty-five per cent; then from Redwood, Minnesota, to Gardner, South Dakota, fifty per cent. Watertown being a point on the Northwestern railroad, we don't include it in their division-sheet, but we now have divisions with it for points west of Watertown; at the time these figures were made up we had no railroad to the west of Watertown.

Mr. BUTLER: Gardner is near to Watertown?

WITNESS: It is the first station east of Watertown.

Mr. BUTLER: And that is the point where the Northwestern is, also?

WITNESS: No, Watertown is the next point, and the Northwestern runs into Watertown, therefore they do not route Watertown business from their road for Waseca for our haul.

Q. Now, the next local haul which fixes an interstate haul for you, or would fix an interstate haul in case the commodity-rate act had gone into effect.

A. I think that those are the only junction cases that fixed rates.

Q. Then the instance you gave yesterday of the junction at St. James,—and at Lafayette, I think,—

A. That is not a junction.

Q. Oh, that is not a junction?

A. No, that is not a junction; that is where the junction rate fixes other rates, but at St James I did give you $1.75 as the rate fixed by the Omaha road. That is the rate that we think they will fix at St. James, but they did not say so specifically, and for that reason we figured St. James, I find, in my computation in Scott's Exhibit 14, on the basis of $1.99.

Q. Why would you use the basis of $1.99 there then?

A. Because we haul Sherburne business through St. James and St. James business through Sherburne. We approach those stations from both directions; that is, we approach Sherburne through St. James from Lake Superior ports, and from Lake Michigan ports we approach St. James through Sherburne.

Q. And the distance between them is what?

A. Is slight. According to this map the distance between St. James and Sherburne is twenty-six miles.

Q. The Omaha has no local line direct from Duluth to St. James, has it?

A. I think they have a local line direct from Duluth.

Mr. BUTLER: Not wholly within the state.

WITNESS: They have a local line from Duluth to St. James.

Q. Have they a line wholly within the state of Minnesota from Duluth to St. James?

A. No.

Q. Then any rate it would fix to St. James from Duluth would be a rate for a haul which would pass out of the state of Minnesota and into the state of Minnesota again before reaching St. James?

A. Yes.

Q. Now, you have shown here the local hauls which fix your rates at junction-points, but the stations which are junction-points are very few of the stations on your roads. Would you consider, in making your tariff, that the rates fixed at the junction-points should control the rates on other points of your

road beyond junction-points or nearer to your divisions?

A. The junction-point rate would fix the rate at that point and nearby points but is not the controlling factor in fixing a majority of the rates.

Q. How far, in either direction, in approaching the junction-point or departing from it would it control the rates?

A. Well, it would not control them enough to speak of—somewhat, but the parallel lines are the lines that affect us more and fix a majority of our coal rates.

Q. Then the rates fixed by the local haul to junction-points affect principally the rates to those junction-points only?

A. And they are the maximum, of course, under certain long and short-haul clauses of the Federal law. I cannot give the exact influence that works into Scott's Exhibit 14.

Q. Yes, but the Federal law as to the long and short-haul would not control as to the local hauls in Minnesota?

A. No. We have used specific rates to specific points, based upon exact distance, in figuring Minnesota, and that fixes a certain rate at a junction in Minnesota; that *may* fix the maximum rate on an interstate haul and does in many instances.

Q. Then as I understand it, either because there is a law of the state of Minnesota which prohibits a greater charge for a shorter than a longer haul in the same direction, or because you don't want to make a greater charge for a shorter than a longer haul in the same direction, you fix your rates at junction-points as a result of the competition of other roads and then use that as a maximum for that distance on local hauls wherever it applies; is that right?

A. No, that is not as I meant to state it.

Q. Well, then, just explain, will you, in your own way, in what way these rates which would have been fixed at the junction-points you have mentioned would have affected your local

rates near the junction-points and why they would have had that effect?

A. Take the station of Hanska, Minnesota, the rate from Duluth to Sherburne, Minnesota, under the statute rate, would be $1.99, as I figure it; Hanska, Echols, Minnesota, Ormsby and Monteray, are intermediate points; now, from Duluth to those points the Sherburne rate might be the maximum on our road, but in the case of Hanska we had some shipments from Green Bay, Wisconsin, came to our road from the Chicago, Milwaukee & St. Paul at Minnesota Transfer, and we handled the shipments from Minnesota Transfer through Winthrop to Hanska and our rate was $1.99, or would be $1.99, as I understand it, and as we have figured it in Scott's Exhibit 14 as a result of the rate from Duluth to Sherburne fixed by the Milwaukee road entirely within the state of Minnesota.

Q. Yes, that, though, is not the question I put to you; that is another instance of what we have had before. The question here is—you have shown how your rates on interstate hauls would have been fixed at these junction-points and that they would be fixed at the various rates specified because of the competition of the local haul, that is, the haul from Duluth, for instance. Now, the question I asked you was in what way, if at all, the interstate rate which you have fixed for these junction-points would control or affect the rate on local hauls near to these junction-points on your line, if any.

A. What do you mean by a local haul?

Q. One that is entirely within the state of Minnesota, begins and ends in Minnesota.

A. If I understand the question, I don't think that there is any such case. I don't think I understand the question.

Mr. BUTLER: May I inquire: Did not the illustration that he just gave touching Hanska show how the junction-point rate controlled the intermediate single-line-point rate with respect to interstate business which came to them at Minnesota

Transfer from the Milwaukee road as for an example?

Mr. DURMENT: Possibly, but if so, it didn't make it clear to my mind.

Mr. BUTLER: And the same thing would be true no matter where the shipment originated.

Q. Here is what I have in mind: Say at Hanley Falls, you have had a rate from Duluth to that place by way of Minneapolis or Minnesota Transfer of $1.87; out of that you would have had 87 cents from Minnesota Transfer to Hanley Falls, as I remember it. Now, that is also the rate for interstate hauls from Superior and Ashland and also from other Lake Michigan ports to the same point. Now, the question I ask is this, would the fact that you had a rate of $1.87 from Duluth by way of Minnesota Transfer and Hanley Falls in any way affect your rates on local shipments from Minneapolis, say, to Belview or Wood Lake or Minneapolis to Hazel Run or Clarkfield or Boyd?

A. I think not, because Class D rates apply. I think not. It would be the line of the Milwaukee north that would make the rate in the territory you are speaking of now and it would be less than $1.87.

Q. Then the interstate rate at junction-points would have no effect on your local rate as such; you could still charge the local rates prescribed by the statute?

A. We could not.

Q. At the other points?

A. We could not.

Q. Why not?

A. Because the distance from Duluth over the Milwaukee road to all territory, Norwood to Milan, Minnesota, are in competition with our line, the rates are in competition with our line from Duluth and other points through Minnesota Transfer coming down through Winthrop, Fairfax, Belview and out as far as Dawson, Minnesota. For instance, the dis-

tance of the Milwaukee road from Duluth to Bird Island, Minnesota, is 251 miles and it figures a rate of $1.72 under the new statute. That would make our rate from Duluth to Morton; the distance is 264 miles. Their rate at Buffalo Lake would fix our rate at Fairfax, that is the way we checked them in. I have not the exact rates. The rate at Stewart, on their road, would fix our rate at Gibbon. The distance from Duluth to Stewart, over the Milwaukee road, is 230 miles, to Gibbon 241 miles; so that these parallel lines have a greater effect in fixing what we can charge than the junction-point rates.

Q. Then, as I understand it, the competition of a local haul in Minnesota with interstate hauls coming to the same junction-point operates as a practical matter, as a business proposition, to fix the rate on the interstate haul to that junction-point?

A. If I understand your question I should say yes. I am not sure I understand it.

Q. But when that interstate rate is once fixed to the junction-point in that way, it doesn't have any particular influence in changing the local rates near to the junction-point for local hauls?

A. It does in almost every case on our road in the interstate haul.

Q. Well, the interstate haul, yes—

A. Yes, affects the local; the interstate haul to a junction fixes the maximum rate to the local point that we can charge.

Q. To that particular point?

A. To any points between those junctions.

Q. Between those junctions?

A. Yes, and that "blankets" our entire road except possibly west of Winthrop.

Q. Well, now, that was what I wanted to find out about—whether there was any feature of that sort in these interstate rates.

A. There is.

Q. Now, will you please explain, then, not only what you mean by the term blanketing, but just in what way this interstate rate which would be fixed at the junction-points would act as a maximum charge or rate for other points on your line on local shipments.

Recess until 2 P. M.

AFTERNOON SESSION.

Last question read.

A. The rate from Duluth to Sherburne, Minnesota, based upon the distance of 330 miles, under the statute rate would be $1.99. The rate to New Ulm would be $1.99, as I figured in Scott's Ex. 14. The Northwestern railroad, that handles coal from Sheboygan and Milwaukee, turns it over to our road at Waseca, Minnesota, or at Sioux Rapids, Iowa; that is the district just referred to between New Ulm, Minnesota, and Storm Lake, Iowa, passing through St. James and Estherville. The Rock Island road delivers coal to us from Chicago and such Lake Michigan ports as it reaches or has tariffs to *via* Estherville, Iowa. The rate from Duluth makes the rate in that district from Milwaukee and Chicago, Sheboygan and Green Bay. The roads coming to us,—for instance, the Rock Island,—from Chicago comes through Estherville to get to New Ulm; their coal reaches us at Estherville to go to Spencer and Sioux Rapids and Storm Lake. Storm Lake is a connection with the Illinois Central road; Sioux Rapids is a connection with the Chicago & Northwestern road; Spencer is a connection with the C. M. & St. P. road; Estherville is a connection with the C. R. I. & P. road; Sherburne is a connection with the Chicago, Milwaukee & St. Paul railroad; St. James is a connection with the C. St. P. M. & O. road; and New Ulm has a connection with the C. & N. W. road, although there was no connecting track at the time of the traffic that made the figures in Ex. 14.

Now, in letting those roads through those junctions, $1.99 must be the maximum rate. The Northwestern road hauling through Waseca at the time those figures were made, had a rate of $2.25 at Waseca. The rate at New Ulm was $2.25; the rate at St. James was $2.25; the rate at Sherburne was $2.25; at Estherville was $2.25; at Spencer and Sioux Rapids and Storm Lake was $2.25 or higher. Now, as the Northwestern comes to us at Waseca to get to Sherburne and Estherville and Spencer and Storm Lake, it begins at Waseca to tear down its rate from $2.25 to $1.99, or would at that time; it tears down the rate at New Ulm from $2.25 to $1.99; at St. James from $2.25 to $1.99; at Sherburne from $2.25 to $1.99; at Estherville from $2.25 to $1.99; at Spencer and at Storm Lake the same, making a rate of $1.99, or throwing a "blanket," as I express it, over the entire territory.

Q. The Northwestern does that? I mean in your example.

A. I am using the Northwestern as an example, but I can use—

Q. No, that is all right.

A. Now, the Northwestern approach us, also, and deliver coal to us at Sioux Rapids. We also have lines delivering us coal at Fort Dodge, and lines delivering us coal at Des Moines; at the time Ex. 14 was made the rate at Des Moines was $2.50 on hard coal from Lake Michigan ports. At Perry, Iowa, a junction-point with the Milwaukee road, the same; at Fort Dodge, the Illinois Central had the same rate in; at Rolfe, —the Northwestern road, (a junction with our road,) had a $2.50 rate; at Spencer a junction with the Milwaukee road, there was a $2.50 rate at that time; at Estherville, Iowa, there was a $2.50 rate or $2.25. The rates changed during that period of time, but they were $2.25 or $2.50, but applicable generally in this territory; that is, whenever $2.25 was in effect it was in effect generally; whenever $2.50 was in effect it was in effect generally. Now, in taking this coal—that is, the

Minneapolis & St. Louis road has connections with lines at Des Moines and at Grand Junction; it has a connection in Iowa with the Northwestern road, and we get considerable tonnage there; that rate was $2.50. In order to reach this territory at Sioux Rapids through Sioux Rapids to meet our competition or the competition that exists in our territory with other roads, like Estherville and Spencer and Storm Lake, it makes a $1.99 rate all over that territory, so that the blanket would extend from Des Moines, Iowa, at least to New Ulm, Minnesota. Now, we figured Scott's Ex. 14 on that basis. But the Chicago & Northwestern Railroad did say that by reason of the rates that would be put in from Duluth to points on the Milwaukee road at Glencoe, at Buffalo Lake, Olivia, Renville, etc., if that affected our rates (as it would and as we figured it would and made our computations accordingly) that it would affect their line at Sleepy Eye and at Redwood Falls and they would put in a rate of $1.72 to meet our competition at Redwood and the Milwaukee's competition above there. That is, if we met the Milwaukee's competition, the Northwestern said they would meet ours, which would make $1.72 at Redwood Falls, Sleepy Eye and other points in that district; and if that were true and they did that, it would throw the $1.72 blanket over this territory instead of the $1.99; but I figured on $1.99 because I felt that in the end the Northwestern road might not do what they said they would do.

Q. This $2.50 and $2.25 rate you speak of from Des Moines, would be that rate starting from Des Moines and coming north into your territory?

A. Everybody reaches everybody else's territory through another junction.

Q. I know, but the $2.50 rate would be for a haul from Des Moines in to these points?

A. Yes, or from Grand Junction.

Q. From either one of those points?

A. Yes, from either one of those points.

Q. That would be a $2.50 rate for traffic beginning or starting at Des Moines or Grand Junction?

A. At Grand Junction.

Mr. BUTLER: And from Milwaukee to those points—Lake Michigan points?

WITNESS: Yes, or Fort Dodge or Rolfe.

Q. I know, but would it be a $2.50 rate from the Michigan ports to Des Moines?

A. The $2.50 rate would apply from Lake Michigan ports directly to Des Moines; it would apply directly at Fort Dodge, would apply directly at Sioux Rapids.

Mr. BUTLER: From junctions, instead of points reached through the gateway, is Mr. Durment's point, I think.

WITNESS: The rate is to the junction, yes.

Q. It wouldn't have to come through Des Moines or Grand Junction to get to those other points at $2.50?

Mr. BUTLER: It would be higher to the other points, if it was permitted; it would be farther.

A. Now, that is one blanket. In the case of Albert Lea, as I testified this morning, I figured on the basis of a $1.78 rate. The rate from Lake Michigan ports to Oskaloosa, Iowa, is $2.25, or was when Scott's Ex. 14 was made. The rate at Albert Lea, Minnesota, was $2.25. We take business, that is, the Iowa Central company, takes business from the C. B. & Q. at Monmouth, Illinois, and that is our principal connection for our Iowa Central territory when freight is coming from Chicago and Chicago junctions and Lake Michigan ports. Now, to make a rate of $1.78 from Milwaukee to Albert Lea or from Duluth to Albert Lea, we would haul that freight (that hard coal) through Monmouth, Illinois, crossing the Mississippi river at Keithsburg, Illinois, following up through Winfield, Iowa, and Hedrick, Iowa, and at the time Scott's Ex. 14 was made we would have struck a $2.25 rate on hard coal from Lake Michi-

gan ports to Oskaloosa, reducing the rate at Albert Lea from $2.25 to $1.78, hauling this Lake Michigan ports hard coal *via* Monmouth and that line would reduce our rates at Oskaloosa and all points intermediate with Albert Lea from $2.25 to $1.78, throwing a $1.78 blanket plan of rates over that district instead of a $2.25 rate. The $2.25 rate is made obligatory upon us for more reasons than because of the routing *via* Monmouth. The Northwestern road approaches the territory from Oskaloosa to Albert Lea through Marshalltown, Iowa; the Milwaukee road approaches the same territory with hard coal from Lake Michigan ports through Pickering, Iowa; the Illinois Central road approaches the same territory from Lake Michigan ports *via* Ackley; the Great Western road approaches the same points from Lake Michigan ports either through Hampton, Iowa, or through Marshalltown, Iowa; the Milwaukee road, in addition to approaching the same territory through Pickering, Iowa, may approach a good deal of it through Mason City, Iowa; so that with the Milwaukee road competing for our business at a Northwestern point and the Northwestern road competing for our business at a Milwaukee point, the Milwaukee and the Northwestern road competing at one of our Rock Island points, and the Rock Island competing at our Milwaukee and our Northwestern points, and the Great Western competing for all, and the Illinois Central competing for all, and the others competing for other traffic forces a uniform rate in that entire territory. That is what I mean by "blanketing" coal rates.

Q. Then, as I understand it, blanketing means that because different points in a certain territory are accessible to roads that come from different ports or territories of supply and are all competing for the trade in that particular territory, whenever you fix a rate that enables one road to compete for business in that territory, the other roads that want the business have got to fix the same rate from their point of supply in or-

der to compete with it?

A. That is it, and—

Q. And the result is that in this territory because of the competition and because of that fact it gives the same rate to a number of different points from the various points of supply, although they may differ as to the length of haul and otherwise as to location?

A. Competition makes a uniform rate because of that principle that you have stated.

Q. And this "blanketing" you have spoken of here though, so far, has been only as to interstate traffic?

A. Yes.

Q. Now, just another question: At one point here I think you said that where you brought hard coal through Monmouth, Illinois,—

A. Through Monmouth.

Q. —through Monmouth, Illinois, it came up to Oskaloosa; was that the point?

A. Yes, it hits there.

Q. And there you hit the $2.25 rate?

A. Yes.

Q. That there was also a $2.25 rate at Albert Lea from some other point?

A. Yes.

Q. Now, what would be the rates between those two points on your line of road?

A. As I have stated, that would be the blanket of $2.25.

Q. All points between there would be $2.25?

A. Yes.

Q. Now, we haven't had before any mention of hard coal coming by way of Monmouth up this way.

Mr. BUTLER: That was spoken of.

A. Well, whether it was or not it is our recognized Chicago connection to Iowa Central territory, and it doesn't apply to

Minneapolis & St. Louis territory, but I was explaining how a "blanket" would act, and in that way had to bring in the Monmouth gateway.

Q. But that would affect the rates here in Minnesota territory at Albert Lea?

A. Yes, Mr. Durment, but if, on the other hand, we decided to compete, if we decided to let all these roads compete for Montgomery and New Prague business and business in that district at the $1.48 rate, it would pull down from Oskaloosa to all of that territory; it would pull it down from $2.25 to $1.48; but as I explained this morning, in order to save that territory we tried to figure out a way by which we could hold Albert Lea up in the case of hard coal. That would not apply in the case of soft coal, although the blanketing process is exactly the same, but the lowest rate would be the blanket. In the case of hard coal we have struck an intermediate process.

Q. Then "blanketing" is the result of opening up territory to competition of other lines which forces the same rate from various points of supply to various points of distribution within a certain territory?

A. Yes.

Q. And to enable all roads from these various points of supply to get in there upon an equal basis?

A. Competition between the carriers and between the commodity sellers (if you will) forces that blanketing.

Q. Now, we understand what blanketing is. How would the rate, for instance, at $1.87 at Hanley, which is fixed for your interstate hauls (or would be fixed if this law had gone into effect,) affect the rates which you would fix between Minneapolis and Hanley Falls, if at all? I mean now not on through shipments, but on local shipments.

A. From Duluth?

Q. No.

A. From Minneapolis?

Q. Yes.

A. Well, I don't think it would affect Minneapolis rates because the Minneapolis rates are on the Class D basis and they are so high in themselves; but the rate at Sherburne—

Q. Well, let us get this straight first.

A. The blanket would not apply there under those circumstances, I don't think.

Q. Then, as I understand it, the fact that you would, if the commodity rate had gone into effect, fix a rate from Duluth to Hanley at $1.87 would not in any way affect the charges you would make for local hauls from Minneapolis to Hanley or points between Minneapolis and Hanley?

Mr. BUTLER: You mean on local rates there?

Mr. DURMENT: Yes.

A. If I understand the question right, I will say that the rate from Duluth to Hanley Falls of $1.87 would not change the statute rate from Minneapolis to Hanley Falls, the latter rate being $1.12 under the new statute.

Q. Nor (I suppose) would it in any way change what would be the statutory rates from Minneapolis to any point west and between Minneapolis and Hanley Falls?

A. I think not.

Q. What effect, if any, would the putting in of the $1.87 rate at Hanley Falls for shipments from Duluth to Hanley Falls have upon the rate which would be charged on hard coal from Minneapolis to the stations west of Hanley Falls?

A. I don't think it would have any effect.

Q. I suppose it is true that the fixing of the rates at these various junction-points which you have testified would have been put in if the commodity-rate act had gone into effect,—for instance, from Duluth to Montgomery the rate at $1.48, from Duluth to Albert Lea the rate of $1.78, Duluth to Sherburne $1.99,—would not make any change or require any change in local shipments in hard coal from Minneapolis to

points on your line between or beyond those junction points?

Mr. BUTLER: In Minnesota?

Mr. DURMENT: In Minnesota, yes.

A. I think not. I think that the rate from Duluth to any point on our road in Minnesota on hard coal would not reduce any rate on hard coal from Minneapolis to any point in Minnesota.

Q. Do you remember what proportion of the rate of $1.40 the Minneapolis & St. Louis gets on coal from the Peoria district?

A. Soft coal?

Q. Yes.

A. To what point?

Q. To Minneapolis, delivered to you at Albert Lea.

Mr. BUTLER: $3 off, and 22 cents on the Iowa Central and 23 on the Illinois Central; isn't that the way we have had that so often?

Mr. DURMENT: I am not sure, but I think there was a difference here.

WITNESS: There is a difference as between the Illinois Central and the Iowa Central in the divisions.

Q. Well, as I remember your testimony, that any coal from the Peoria district which comes over the Iowa Central road by way of Albert Lea and then the Minneapolis & St. Louis to Minneapolis, the rate was $1.40?

A. Yes.

Q. And the Minneapolis & St. Louis's proportion of that was 30 per cent?

A. No, the Minneapolis & St. Louis would be $3 out and 22 per cent of the balance; that is, the Twin City business.

Mr. BUTLER: 22 per cent of it came on the Iowa Central?

WITNESS: Yes.

Mr. BUTLER: And 23 per cent of it came on the Illinois Central?

WITNESS: Yes.

Q. Assuming the car to contain 25 tons, which I understand you was about the average,—

A. Yes.

Q. —your road then got, during the period covered by Ex. 14, 41.1 cents per ton for the haul from Albert Lea to Minneapolis of hard coal?

A. No, soft coal.

Q. Soft coal?

A. Yes.

Mr. O'BRIEN: Isn't that 40.1?

WITNESS: I figured it 41.1, but I guess you are right, Mr. O'Brien, 40.1 cents per ton; that is right.

Q. Now, is 40.1 cents per ton for hauling soft coal from Albert Lea to Minneapolis remunerative?

A. I think not.

The MASTER: When you say the rate from Albert Lea north to Minneapolis was not remunerative, do you take into consideration the whole volume of that kind of traffic passing over your road?

WITNESS: I took into consideration, in answering that question, the volume of that particular traffic passing over our road from Albert Lea to Minneapolis, and I said that it was not remunerative; but when I take into consideration the fact that that coal comes to us in a foreign car or the car owned by some other railroad and that I attract that equipment onto my road, and that the per diem expense is only 25 cents a day and that we are short of equipment and that we can load that car with flour or wheat or grain, or haul it over into Dakota and haul a shipment back with it, I should consider that that was a different proposition, and that under those conditions it might be very remunerative, but not remunerative at all under the other condition.

Q. That is to say, it might enable you to rent cars for your

traffic cheaper than you otherwise could get them?

A. Well, in the interchange of traffic we aim to get as much as we can out of that interchange, and as cars are one of the things we interchange we consider that it is wise policy to invite the car onto our road in order to get a good paying load off. If there is no manipulation about it, it is in the natural order of business. In other words, if I want to make a cheap rate to attract an Illinois Central box-car or an Iowa Central box-car or a Wisconsin Central box-car onto our road, it has the effect of providing equipment for the Minneapolis & St. Louis road that is very short in box-car equipment.

Q. That is to say, being without sufficient box-cars for your business, you make a rate that would not be remunerative in itself in order to get the cars onto your road so that you may use those cars for other traffic that will be; is that it?

A. That is not the primary motive. The primary motive is to get cheap coal for the manufacturing industries in competition with other supplies of coal; but when I come to figure the remunerative qualities in a rate or the earning power of a rate, whether there is a net or not I must take all of these other things into consideration, and that is the way I understood the Master's question.

Q. And you would use these cars in what way that are thus attracted to your road by an unremunerative rate?

A. I would use them back in the very best possible way.

Q. I know;—back in the same direction or do you send them in different directions?

A. I might send them in different directions.

Q. You may send them on farther west?

A. I might take them west and load them with wheat at Watertown for Chicago if Watertown elevators were glutted with wheat and they were turning farmers away; I would place that car where it was needed the most.

Q. And ship it back over the same road that delivered it to you?

A. Not necessarily, although that would be the rule, possibly. I would use it to the best advantage of the M. & St. L. road.

By Mr. O'BRIEN:

Q. What is the system of paying for cars of other roads that you have?

A. Well, I think now it is 25 cents a day, the per diem charge.

Q. Whether the cars are in use or not?

A. Yes.

Q. So that if cars are not in use it would be an additional expense to you?

A. .It would be to our advantage to turn them back quick, and we would.

Q. Empty or loaded, dead or alive?

A. Empty or loaded, dead or alive. We would haul it any way the shortest distance and get it back.

By Mr. DURMENT:

Q. Do you pay 25 cents a day for cars that come from other roads onto yours from the time they are unloaded until they are returned to the other road although you return them empty and at once?

A. Yes, because the loss to the other road is just the same whether the cars are loaded or empty; that is the theory.

Q. And when do you begin to pay your 25 cents a day?

A. Oh, I think immediately it is reported to our road, it dates from that time.

Q. That is from the time it comes onto your road in delivering the freight to you, or from the time it is unloaded?

A. As soon as it comes onto our road we report it by postal-card to the other road, and the 25 cents a day begins to go to the other road. Now, if that car goes away from us to some

other road, to some other junction, we would immediately send a postal-card to the owners of the car saying that it had gone to the Wisconsin Central or some road, and then they would begin to charge the 25 cents a day to the other road, but it would be charged whether empty or loaded.

Q. Well, suppose a car is delivered to your road at Albert Lea which is to go over your lines out to LeBeau, say, the western termini, and assume, for example, that it would take three days to run from Albert Lea to LeBeau with that car.

A. It would take five or ten.

Q. Well, say it would take ten days. It is loaded with freight out, of which you would get your share of the freight charge?

A. Yes.

Q. Do you pay in addition to that the 25 cents a day for the ten days it takes to go from Albert Lea to LeBeau?

A. We pay 25 cents a day for the time that is consumed in going there, and if the car comes back empty we pay 25 cents a day, just the same, until it is delivered back to the connecting line at that point.

Q. And in the case I have put, if your share of the through freight was $25, you would have to pay out of that as an expense $2.50 for the ten days' rent of the car, would you?

A. Yes.

By Mr. O'BRIEN:

Q. What is a box-car worth, Mr. Tittemore?

A. Oh, that varies; I don't care to make a figure, Mr. O'Brien.

Q. Can't you give us an average price?

A. Oh, I should say that a good box-car during the last three years—I can't speak of the period since the panic—previous to that time a good box-car would cost us complete a good thousand dollars, from wheel to roof,—I mean the entire car.

Q. 25 cents a day is a pretty liberal allowance for interest on that, isn't it?

A. I don't know how that would figure out, because it all depends upon how long you let your car stay away and how many you have got in a certain place.

Q. 25 cents a day would be about 10 per cent per annum interest on a thousand dollars.

A. Well, I don't know; I didn't figure it.

Q. In that neighborhood. So that when you are paying 25 cents a day you are paying a pretty good rent for the car?

A. Well, we pay a pretty good rent when we haven't a thousand dollars to buy the whole car.

Q. And when your cars are away, that same rental is paid to you?

A. Yes.

Q. Now, as a matter of fact, doesn't that about equalize itself?

A. I think at times,—I think there was a time when we needed our cars like fury that other roads kept them and that we got good money on the per diem (if you take that) that is, the balance was in our favor; but when we came to take the loss of traffic by the cars being kept away from us we considered that we were a great deal out of pocket—several hundred thousand dollars.

Q. And that rental increases to a dollar a day after thirty days, doesn't it?

A. Oh, I think so, but then we don't go to that extreme; we send them back before that.

Q. Then you could get up to $40?

A. Well, we don't hold them unless there is a blockade, and that never occurred on our road.

Q. How much did the Minneapolis & St. Louis pay for the rental of box-cars during the period covered by Ex. 14?

A. That I couldn't tell you.

Q. Will you please make a note of that and let us know?

A. Yes.

Q. It practically equalizes itself, doesn't it?

Mr. BUTLER: Those are all involved in the making of certain other statements that are in evidence by Mr. Scott, perhaps.

Mr. O'BRIEN: I think that statement ought to go in here, because Mr. Tittemore has made that as one of the reasons why a rate otherwise unremunerative would be accepted, and I don't think he means that exactly.

WITNESS: Yes, I mean that. I mean to say too, that the balance at times was so much against the M. & St. L. road by the foreign cars coming into Minneapolis as to run our operating expenses up to a frightful figure, we couldn't get them unloaded, the shippers wouldn't unload them, and we had to pay the per diem as against our own wishes oftentimes.

Q. That made the rate still less remunerative, didn't it?

A. I don't want to argue for that rate under any circumstances.

Q. Well, it made that rate still less remunerative?

A. I should say it did.

Q. Are foreign cars mostly from traffic outside of the state? You are exchanging cars with all roads, aren't you, constantly?

A. We exchange cars with all roads.

Q. But they are mostly from outside the state?

A. Yes, from all over the United States. We might get 50 cars from the Illinois Central during one day and ten of them belong to the Illinois Central and the balance be New York Central and Chesapeake & Ohio, but the value of the equipment to the M. & St. L. is the same.

Q. If the equipment of the M. & St. L. is so insufficient that it is compelled to depend upon outside cars, for which it pays a rental, that rental should not be charged to the operating expenses, should it?

A. I didn't say that the M. & St. L. was deficient in its equipment; I said that it didn't have as much equipment as some of the other railroads had, and that enters into its competition with other roads.

Q. You gave that as one reason for accepting this rate, Mr. Tittemore?

A. No, I want to be understood right on that. The Master asked me a question and I answered it, and I said at the last that that would have to be taken into consideration ultimately or might be taken into consideration in fixing the remunerativeness of a rate, but he asked me as to a specific rate. I wouldn't want to give that answer and say that it applied to all of the traffic, in other words, of the M. & St. L. road, without I took more advice on the subject.

Q. Mr. Tittemore, one division and one of the main divisions of the Minneapolis & St. Louis road is from Minneapolis to Albert Lea, is it not?

A. Yes.

Q. Freight which passes over that entire division is what is known as through freight?

A. Yes.

Q. Whether it is interstate freight or state freight?

A. Yes, we would consider it through, I think, Mr. O'Brien.

Q. Well, isn't that generally true, that freight which passes over an entire division is through freight?

A. I don't believe the trunk lines would consider it through freight, at least I wouldn't understand it so if that question was put to me by another railroad man, but it would be in our case.

Q. And a train which would go over the entire division would be called a through train?

A. Yes, in our case it would, Mr. O'Brien.

Q. Now, that might be a train which would serve the intermediate points, or it might be a train that would not serve

any intermediate points, go through solid from Minneapolis to Albert Lea?

A. The theory is, of course, that it would go through solid to Albert Lea; that is what I would understand as a through train.

Q. Your idea of a through train would be one that would go through solid to Albert Lea?

A. Well, solid to Albert Lea; that is, have a through load, (and, after all, a train is a load,) from Minneapolis to Albert Lea.

Q. What would you call the train that serves the intermediate stations?

A. Well, we call it a local train or way-freight train.

Q. You call that a way-freight train?

A. Yes, I think in the time-card it is denominated as a local train, and then in other instances a way-freight train; it expresses a different train, at least to a trainman.

Q. So that when you refer to a through train on the Albert Lea division you would mean a train that the entire load would go through from Minneapolis to Albert Lea?

A. Yes.

Q. A way-freight train would be one which would serve the intermediate points, although it might carry also some freight from Minneapolis to Albert Lea?

A. Yes.

Q. And that way-freight might consist of carloads?

A. There would be carloads in it.

Q. And it also would consist of broken lots?

A. Yes.

Q. Or less than carlots?

A. Yes.

Q. So that the same train would carry freight, the packages consisting of a carload and packages of much less than a carload?

A. Yes.

Q. This coal that is brought from Illinois and delivered to your road at Albert Lea is distributed between Albert Lea and Minneapolis by trains which we have classed as way-freight trains, is it not?

A. It might be distributed by either, but most likely by the way-freight train.

Q. According to the definition you gave, unless the train went through solid to Minneapolis it would be a way-freight?

A. So far as the business of the M. & St. L. road is concerned, no matter how I designate our trains, like the hands of my body, I use them for doing our work in the most economical fashion because of the thinness of the traffic that oftentimes confronts us.

Q. Now, I have no doubt that that is so, and that there would be no moral or legal objection to you making an exception with regard to any of your trains, but I say that the ordinary course of business is that the coal that is received by your Company, the Illinois coal that is received by your Company at Minneapolis, is distributed to intermediate points by way-freights?

A. Well, I believe it was, during the period that we have been referring to here as covered by Scott's Ex. 14, but since the panic I believe that I wouldn't want to say that. A through train might distribute at certain junction-points; that is, the tonnage might be equalized as between the local or way-freight train and the through train, but under the general acceptation all of the coal that comes to us at Albert Lea for Minneapolis would be handled in the through train, say, and all of the coal that would be handled for intermediate points between Albert Lea and Minneapolis would more than likely go on the way-freight train or the local train.

Q. How many way-freight trains are there daily on your road between Albert Lea and Minneapolis?

A. I couldn't say without I looked at the time-card, I haven't a working time-card.

Q. Are there the same number going north as coming south?

A. Yes, I think so.

Q. They are really corresponding trains, a way-freight going north and a way-freight coming south?

A. Yes, and if there were two going north there would be two going south.

Q. And the crews for those trains are made up for the north-bound train at Albert Lea?

A. Yes.

Q. And for the south-bound train at Minneapolis?

A. At Minneapolis or St. Paul, one of the Twin Cities.

Q. And the length of haul (the distance consumed) is about the same?

A. The distance would be the same; the distance traveled by either train would be the same.

Q. And the length of time taken to make the trip would be about the same?

A. Well, I wouldn't want to say that unless I consulted the record, because that might not be so, and it might not be so in so many cases as to affect the result that you may have in your mind.

Q. Of course, the time that any freight train may take (any way-freight will take) varies according to the work that the crew is required to do?

A. That is true.

Q. But when I speak of time, I mean the schedule time coming north is the same as the schedule time going south.

A. I couldn't say without consulting the card, because the work may be distributed differently, Mr. O'Brien. Experience may show that one of those trains does more way-freight work, that is, more loading and unloading of merchandise at the dif-

ferent stations, and they may throw the switching on to the other train, so that only our general superintendent or trainmaster should testify to that question.

Q. Well, all regular freight trains are attempted to be run upon a schedule, are they not?

A. Yes.

Q. And is there any difference in the schedule time between a train from Minneapolis to Albert Lea and a train from Albert Lea to Minneapolis?

A. Oftentimes there is considerable difference in the same class of train; I don't know how it is at present.

Q. You don't know whether there is or not?

A. I do not know now.

Q. Now, coal coming from Duluth and received by you at Minneapolis would be distributed in a south-bound train of a corresponding character, would it not?

A. Coming from Duluth to us at Minnesota Transfer would be handled in about the same way, yes.

Q. The same sized crew, in fact the identical crew, which brought a train from Albert Lea to Minneapolis containing coal from Illinois would, the next day, or the day after that, take a train from Minneapolis of the same character bringing coal to points upon the line of your road from Duluth?

A. I think that is true.

Q. In equipment, in size of the train, in wages of the train employes, there is absolutely no difference between those trains, is there?

A. No.

Q. The reason that coal can be brought cheaper from Duluth to points upon the line of your road than it can from Illinois is because the ports upon the lake, ports upon Lake Superior, (Duluth and Superior) are nearer to those points than are the mines in Illinois?

A. I don't figure the rates are cheaper from Duluth.

Q. We are not figuring what the rates are, but I say the

reason of it. I will change the question. The ports upon the lake, upon Lake Superior at the Head of the Lake are nearer to the stations upon your road between Minneapolis and Albert Lea than are the mines of Illinois, are they not?

A. Yes.

Q. Transportation can be made by water much cheaper than upon railroads, can it not?

A. I believe it can.

Q. Therefore, so far as the actual cost to you or to anybody else is concerned, coal could be brought from Lake Superior to the stations upon your road cheaper than it could be brought by rail from the mines in Illinois?

A. If you would just elucidate that a little I could answer it. That is, if we had a continuous mileage, do you mean?

Q. Whether you had or whether you hadn't; the actual cost of bringing coal to the stations upon your road by way of the lakes and by way of Duluth is less than by bringing it upon railroads from the mines in Illinois that you have been speaking about?

A. I don't think that is exactly so, but generally so. I mean that when we get coal from the northern lines at Minnesota Transfer, take it through a glutted terminal down to some point between Minneapolis and Albert Lea, I don't think that we can do it for the same price that we could if we were to get that same coal from Albert Lea going to some point even where the distance is the same.

Q. And the objections that you make as a traffic man to the rates prescribed by the State of Minnesota for the carriage of coft coal are not that those rates are insufficient in and of themselves, but because their enforcement will result in reductions by other roads upon other lines and force a reduction of other rates maintained by you?

A. I believe that the competitive feature, as you have explained it, is the greatest menace that the rates have to the

revenues of the M. & St. L. road, the greatest one item.

Q. And you are not willing to say now, under oath, that this rate prescribed by the State of Minnesota upon soft coal, which is nearly double the rate you receive upon your interstate hauls from Illinois, is not just and fair in and of itself, but its injurious effect to your road will be because it will bring about competitive conditions that you think will be injurious; isn't that the fact?

A. That is part of the fact, and then the balance of the fact is, Mr. O'Brien, that not having any road to Duluth, not wanting our grain products to go that way, and because the lines between Duluth and Minneapolis will not permit their equipment to come on our road when we need it most for a return load, and if it does go they insist upon its going back empty, that we cannot make the most out of the traffic that offers at our stations. It is my duty as the traffic manager, when I find a rate that interferes with my doing my maximum work and earning my maximum money for my Company, I consider that it is not wise to invite that traffic.

Q. Now, that condition of things as we have now arrived at them, is true with regard to every article of freight mentioned either in the Commission's order of September 6th or in Chapter 232, is it not?

A. I consider that the order with regard to the merchandise rates reduces the rates below what they should be; that is, I believe that the order fixing those rates makes rates too low, and that those rates do not stand or bear, or that that traffic, the merchandise or class traffic, does not bear its right proportion to the commodity rates. In other words, I think that the order of September 6th, so far as it relates to the merchandise rates, should have advanced the rates.

Q. Now, is it not true that the rates fixed by the order of the Commission of September 6th for the transportation of merchandise are relatively as much higher above your inter-

state rates upon the same classes, as we have found to be the case with coal?

A. That I couldn't say, Mr. O'Brien.

Q. If that is true, does not the same condition of things pertain to that that does with regard to soft coal?

A. No; the class rates and the soft coal rates have no connection in any way.

Q. If the class rates are relatively just as high as compared with your interstate rates, does not the same condition apply?

A. I should say not, if I understand your question right.

Q. A large portion of the merchandise which you receive from the Illinois Central and the Iowa Central is distributed along the line of your road exactly the same as state traffic is, is it not?

A. Yes.

Q. Interstate freight is not necessarily in carload lots?

A. The first four classes would not be in carload lots.

Q. It is received at Albert Lea by you in the same way that coal is received?

A. Yes, and at the same—

Q. It is transported from Albert Lea upon way-freight trains, is it not?

A. Oh, sometimes.

Q. The same train that contains a carload of coal for a station, for Manchester, let us say, may contain in another car 300 pounds of freight coming from Chicago?

A. Well, I should hate to think that of it from Chicago; I don't think that could be possible.

Q. Much less than a carload?

A. Less than a carload, but would earn more, usually, than the coal.

Q. Of course, it amounts to more than the coal because the rates are a great deal higher, both interstate rates and state rates?

A. That is the point.

Q. But it is carried in the same train?

A. Yes, sir.

Q. And it is handled by the same men?

A. Yes.

Q. It is pulled by the same engine?

A. Yes.

Q. It is an identity of service, is it not?

A. Yes, but we never take that into consideration.

Q. Well, I think it ought to be, so we will let it go.

A. Well, Mr. O'Brien, I want to say that I think it is fair for me to say for the rates in Iowa and for the Railroad Commission, as a traffic man, I think the merchandise rates from Chicago and from every point west of Chicago are all too low and that they do not share as they should the burden of transportation. I don't want to be considered to say that alone of the Minnesota rate.

Q. The usual price received by railroads transporting wheat and wheat products from Minneapolis to Chicago is $1.50 per ton, is it not?

A. That is the proportion of the joint rate.

Q. The usual price received by railroads for transporting wheat and wheat products from Minneapolis to Chicago is $1.50 per ton, is it not?

A. No.

Q. What is the usual price?

A. The usual price might be, from Minneapolis to Chicago, our proportion of the New York rate, which would be $8.33, it might be $10, but if it comes off from the Minneapolis & St. Louis road going to Chicago, or if it is coming to the Minneapolis & St. Louis road from the Great Northern and the Northern Pacific, then the usual rate or proportion of the through rate would be 7½ cents.

Q. Well, what is the usual rate?

A. Well, it would be that average between all of that traffic and I don't know what that is.

Q. That is the bulk of the traffic, is it not?

A. I should say that the bulk of the traffic would be traffic that goes to the Atlantic seaboard and to Liverpool and to London and to Amsterdam.

Q. Does that go by way of Chicago?

A. That does.

Q. Rail from Minneapolis to Chicago?

A. Rail or lake-and-rail, but rail as I am testifying.

Q. I am speaking of the amount that is hauled by rail from Minneapolis and St. Paul or the Twin Cities to Chicago. Now, what proportion of the traffic is carried between St. Paul and Minneapolis and Chicago at 7½ cents per hundred?

A. That would take me a long time to find out; I don't know.

Q. Can you give us any idea?

A. I haven't any idea.

Q. Twenty-five per cent?

A. I haven't any idea.

Q. You have no idea?

A. I have no idea of it.

Q. All that you know of is carried at that rate?

A. No, I know of a lot that is carried at the other rate, but to get the proportion or the percentage in my head would be impossible.

Q. You can't give us any idea?

A. I can't, because a large proportion of it goes over the Milwaukee and the Burlington, you know. If you refer to our own road—

Q. A large part of it is hauled at that rate?

A. I should say not the major portion at that rate.

Q. Not the greater portion, but a large portion of it.

A. Quite a portion, but that is guess-work entirely.

Q. A large substantial portion—

A. I should say a substantial portion.

Q. —is carried at that rate?

A. I should say so.

Q. 7½ cents a hundred is $1.50 per ton?

A. Yes.

Q. That is for a haul of 500 miles?

A. Yes, sir.

Q. What is the rate allowed by Chapter 232 for a haul of 500 miles in Minnesota?

A. Our tariff cuts off at 300 miles. I find the maximum distance provided for under the statute rate 400 miles, and for that distance the rate would be 12 cents.

Q. That would be how much a ton?

A. $2.40 a net ton.

Q. What is the rate upon lumber from Minneapolis to Chicago?

A. We have the tariff but the rate is 10 cents per hundred pounds.

Q. The same general conditions apply to the carriage of hard coal that do to the carriage of soft coal, do they not, the main difference being in the rate?

A. That is, the expense of carriage?

Q. Yes,

A. I think so.

Q. They are carried in the same trains?

A. Yes, I think so.

Q. And in carload lots?

A. Yes.

Q. And received by you in the same manner?

A. Yes.

Q. And the same conditions that would be proper to be taken into consideration in considering the sufficiency of the rates prescribed for soft coal would be proper to be taken into

consideration in considering the rates prescribed for hard coal?

A. No, I shouldn't think so.

Q. Why not?

A. Soft coal is used altogether or principally on our road for manufacturing purposes; hard coal is used entirely for heating purposes, domestic uses.

Mr. BUTLER: They are in different classes, aren't they, in the act?

Mr. O'BRIEN: Yes.

WITNESS: And another thing, hard coal is a high-priced article compared with many of the grades of soft coal.

Q. You don't understand. I am not questioning the propriety of a different rate for hard and soft coal, because that seems to be conceded by everybody; there is a different rate prescribed by the legislature,—

A. Yes.

Q. —but in comparing the general rates upon your road—the interstate rates and the state rates, the rates prescribed by Chapter 232—the same considerations would surround these two commodities, the only difference being in the rates, it being conceded that one should be carried at higher rates than the other?

A. The transportation problem is the same.

Q. As a matter of fact, it does not cost any more to transport hard coal than it does soft coal, does it?

A. Not where the conditions are the same.

Q. Of course, on one road the conditions are always the same.

A. Yes.

Q. So that it does not cost any more upon your road over the same haul.

A. That is what I mean, Mr. O'Brien, by that, that hard coal coming through from Albert Lea going to a point might

be hauled cheaper than from Minnesota Transfer to the same point, but—

Q. I don't mean that.

A. No, I didn't think you meant that.

Mr. BUTLER: You mean on the same track under the same conditions?

Mr. O'BRIEN: Under the same conditions and on the same road.

WITNESS: Same direction.

Q. One would be no more expensive than the other?

A. That is it.

By Mr. DURMENT:

Q. On the hard coal from Illinois points brought into Minnesota over your road, your proportion from Albert Lea to Minneapolis was 80 cents, I think you said, usually, per ton?

A. That was the hard coal from Lake Michigan ports to intermediate stations with Minneapolis.

Q. Yes, and also from Albert Lea to Minneapolis, wasn't it, was 80 cents?

A. I think not.

Mr. BUTLER: We figured that out yesterday. My recollection is we figured about 55 and a fraction cents.

WITNESS: 56¼ cents to Minneapolis.

Mr. BUTLER: From Manchester to St. Louis Park—

WITNESS: 80 cents.

Mr. BUTLER: 40 per cent of the $2.

Q. Now, was that rate on hard coal from Albert Lea to Minneapolis of about 55 cents per ton (I think it was, or 56) remunerative to your road, in your opinion?

A. Not in itself, no.

Q. You testified, I believe, as to soft coal, that it would require about a dollar a ton for soft coal to make the haul remunerative.

A. Well, I fixed it at about that figure as the least figure, yes.

Q. As the least figure which would make it remunerative?

A. In itself.

Q. In itself, I mean. Now, in hauling hard coal the expense is about the same, it would require at least a dollar a ton to make that remunerative in itself, wouldn't it?

A. Yes, I should want that much to make it remunerative on the M. & St. L. road.

Q. And as to the hauls to other points in which you would get 40 per cent of $2, would that 80 cents be remunerative for hauling hard coal to those points?

Mr. BUTLER: Do you mean from Manchester or St. Louis Park?

Mr. DURMENT: I mean to any of them.

A. I should say that was a fairly remunerative rate, taking all of the points into consideration.

Q. It would be remunerative as to points near to Albert Lea and not so as to those near Minneapolis, probably?

A. Yes, but the average, I think, would make it—

Q. About the average would make it—

A. —would make it fairly remunerative.

Q. About how far from Albert Lea toward St. Louis Park would you go before the 80 cents a ton, in your opinion, would be remunerative in itself?

A. I couldn't say, I wouldn't undertake to say. I wouldn't undertake to figure it out, I don't believe I could.

Q. Now, as to hard coal which would be delivered to you by the Iowa Central at Albert Lea, you would get 30 per cent of the $2 rate to intermediate points?

A. Yes.

Q. That would be 60 cents a ton?

A. Yes.

Q. And, of course, that would be less remunerative than—

that is, that would be remunerative for fewer points than would the 80 cents?

A. On the average it would be less remunerative than the 80-cent rate.

By Mr. O'BRIEN:

Q. Calling your attention to coarse grain, class 12, in Chapter 232, what is the rate upon that commodity from the Twin Cities to Chicago?

A. I refer to M. & St. L. and Iowa Central G. F. O. No. 3290, effective April 27, 1905; I think that these rates were effective during all of the period covered by Scott's Exhibit 14—

Q. Well, I presume so, go ahead.

A. The rate would be 7½ cents on coarse grain.

Mr. BUTLER: That is, from Minnesota Transfer or Minneapolis and St. Paul?

WITNESS: At St. Paul, Minneapolis and Minnesota Transfer.

Q. That would be $1.50 per ton?

A. Yes.

Q. And the rate allowed by Chapter 232 for a haul of 400 miles?

A. Is 10.6 cents per hundred pounds; $2.12 a net ton.

Q. The haul over the Minneapolis & St. Louis and the Illinois Central to Chicago is of what length?

A. 490 miles.

Q. But the short line between the Twin Cities and Chicago is about 400 miles?

A. Yes.

Q. When you gave this rate of 7½ cents on coarse grain, you meant that that was the proportion of a through rate from some outside point in the state which went to the Chicago lines, did you?

A. The tariff reads as a joint proportional tariff from St.

Paul, Minneapolis and Minnesota Transfer, applying only on shipments originating beyond to Chicago, etc.

Q. Will you give us again the rate upon lumber between the Twin Cities and Chicago?

A. 10 cents per hundred pounds.

Q. That is $2 per ton?

A. $2 per net ton.

Q. And what is the rate allowed by Chapter 232 for a haul of 400 miles?

A. 13.7 cents per hundred weight.

Q. $2.74 per ton?

A. $2.74 a ton.

Q. The rate upon cattle from the Twin Cities to Chicago?

A. The rates on cattle between St. Paul, South St. Paul, Minnesota Transfer and Minneapolis to Chicago is 25 cents per hundred pounds.

Mr. BUTLER: Is that the local? Is that the division of the through or the proportional?

WITNESS: This is the local rate.

Q. Is there in the case of cattle a proportional rate?

A. No.

Q. Or a division of the through rate?

A. Oh, there might be.

Mr. BUTLER: There used to be on some of the lines?

WITNESS: Well, yes, take the Northern Pacific, they publish a through tariff; I don't know what the proportion of that rate is south of Minnesota Transfer; we don't handle the traffic and I don't know anything about it, but so far as our rate is concerned, it is 25 cents per hundred pounds.

Q. That would be $5 per ton?

A. That would be $5 per ton.

Q. And the rate allowed by Chapter 232—

A. For 400 miles?

Q. —for 400 miles.

A. Is 20.7 cents per hundred or $4.14 per ton.

Q. What is the rate upon hogs?

A. The rates on hogs between St. Paul, South St. Paul, Minnesota Transfer and Minneapolis and Chicago would be 27 cents per hundred pounds or $5.40 a ton.

Q. And the rate allowed by Chapter 232?

A. Would be 23.3 cents per hundred pounds or $4.66 a ton.

Q. As a matter of fact, are there any cattle shipped from St. Paul or Minneapolis to Chicago on this rate that you have given us?

A. Not by our road.

Q. It is practically a paper rate, is it not?

A. We do not handle livestock around that way, 490 miles; do not compete for the traffic, and, so far as our road is concerned, any rate on cattle would be a paper rate. That is, between St. Paul and Chicago. We do not engage in the traffic, at any rate, don't solicit it.

Q. How about cattle shipments originating upon your line west of the Transfer and destined to Chicago?

A. Well, most of our long-distance shipments for Chicago travel *via* the road that will unite with us in giving the very quickest service, and, taking it west of Winthrop, I think we route most of that business *via* New Ulm and turn it over to the Northwestern road for transportation to Chicago. I am certain that is true of all of our stock from LeBeau, South Dakota, coming off from the Reservation west of there.

Q. Do you make a through rate at LeBeau?

A. We make a through rate from LeBeau to Chicago.

Q. And what portion of that through rate do you give the Northwestern for carrying it from New Ulm to Chicago?

Mr. BUTLER: Mr. O'Brien, you have in mind, haven't you, that since the period covered by Exhibit 14 the LeBeau Extension has been built and that there was no road beyond Watertown during that period? I call your attention to that.

WITNESS: I was going to correct that.

Q. I suppose the same thing would apply to Watertown?

A. It would apply to Watertown to a certain extent, but the shipments from that district are of a different character, they are more dairy stock and butchers' stock, and from that territory I think they like to get hold of the South St. Paul market and most of it would come into South St. Paul, and I am not quite certain as to the conditions at South St. Paul concerning that traffic into Chicago.

Q. Do you know whether you have any arrangement with the Northwestern by which you can quote a through rate, and what proportion of that would be taken by the Northwestern?

A. Through Minnesota Transfer or through New Ulm?

Q. From New Ulm.

Mr. DURMENT: The Northwestern is in Watertown.

A. Well, I presume you mean from the territory around Watertown?

By Mr. DURMENT:

Q. There are points between New Ulm and Watertown that you ship cattle?

A. Yes, they can ship that way or they can ship by the Transfer. We did not have track connections through New Ulm until lately; that is, under the period covered by Scott's Exhibit 14 we could not have shipped stock *via* New Ulm.

Q. Have you now?

A. We have a track connection now.

Q. Have you an arrangement—

A. Oh, yes.

Q. —an agreement as to what rate will be taken by the Northwestern road from New Ulm to Chicago?

A. Yes.

Q. How much is that?

The hour of adjournment having arrived, the question was not answered and an adjournment was taken until Thursday morning, August 20th.

FEDERAL BUILDING, St. Paul, Minn. Aug. 20, 1908, the hearing was resumed at 10 o'clock A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified.

By Mr. DURMENT:

Q. My recollection is that you said on the hard coal delivered to your road at Albert Lea from the Iowa Central through to Minneapolis you got $3 a car terminal charges and 22 per cent of the balance of the rate.

A. That is correct.

Q. You were to look up the Milwaukee divisions on hard coal, that is, the division of the rate, and have it here at the last session; I didn't get around to ask you what it was. The divisions on coal from the Milwaukee district is what I want.

A. I will have it for you in a few minutes.

Q. Minneapolis is the end of the division for all your lines, that is, from Albert Lea, from Storm Lake and from LeBeau, is it not?

A. Well, St. Paul, of course, is the starting point for a great many places, but Minneapolis is the division point. Our shops are there.

Q. Well, Minneapolis and St. Paul are practically one?

A. Yes, practically one in that respect.

Q. But they end a division upon all three of those lines, the Albert Lea, Storm Lake and LeBeau?

A. Yes, you might say they all start from there. I will read the divisions into the record.

Q. And those are the divisions that now obtain or which obtained during the period covered by Ex. 14?

A. By Scott's Ex. 14; that is, they covered during the period covered by Scott's Ex. 14.

Q. Are the present divisions different?

A. About three weeks ago, I had a conference with the

freight traffic manager of the Milwaukee road and we re-arranged our Minneapolis & St. Louis divisions, but I do not know just how it affects coal. There probably is some difference, but it will apply to July 1st of this year.

Q. But up to the 1st of July of this year, these are the divisions?

A. The divisions of the C. M. & St. P. R'y Company on coal shipments from Milwaukee, Wisconsin, to stations on the Minneapolis & St. Louis railroad, Minnetonka Mills, Minnesota, to Watertown, South Dakota, and Lafayette, Klossner and New Ulm, Minnesota,—hard and soft coal, when routed *via* Minnesota Transfer, the C. M. & St. P. R'y Company receives $1 per ton, the Minneapolis & St. Louis road gets the remainder of the through rate. From Chicago, Illinois, to stations on the Minneapolis & St. Louis railroad, Minnetonka Mills to Morton, Minnesota, routed *via* Minnesota Transfer, the Chicago, Milwaukee & St. Paul road receives 55 per cent of the through rate, and the Minneapolis & St. Louis railroad 45 per cent. From Chicago, Illinois, to stations west of Morton, Minnesota, to Watertown, South Dakota, (which was the western terminus of the Minneapolis & St. Louis road during the period covered by Scott's Ex. 14) when routed *via* Minnesota Transfer, the C. M. & St. P. R'y would receive 45 per cent of the through rate and the Minneapolis & St. Louis Railroad 55 per cent. From Chicago to stations Lafayette, Minnesota, Klossner and New Ulm, Minnesota, when routed *via* Minnesota Transfer, the C. M. & St. P. Railway receive 55 per cent and the M. & St. L. 45 per cent of the through rate. Those are our divisions governing hard and soft coal with the C. M. & St. P. Railway during the period covered by Scott's Ex. 14 on shipments from Chicago and Milwaukee to stations in Minnesota.

Q. Then the Chicago, Milwaukee & St. Paul Railway Company didn't deliver hard and soft coal to you at other points than Minnesota Transfer?

A. I haven't given you the complete divisions of the M. & St. L. road, but I will finish them up in a few moments. The balance of the divisions, in order to make the statement complete, are as follows: From Chicago, Illinois, and Milwaukee, Wisconsin, to Minneapolis & St. Louis stations, St. Louis Park, Minnesota, to Manchester, Minnesota, inclusive, when routed *via* Albert Lea, the C. M. & St. P. Railway Company receives 60 per cent and the M. & St. L. Company receives 40 per cent of the through rates.

Q. I notice that the division on hard coal between the Chicago, Milwaukee & St. Paul and the Minneapolis & St. Louis, except in the one case from Milwaukee to Minnetonka Mills and to Watertown, the division is upon a percentage basis, and there is no arbitrary in it?

A. No.

Q. There is an arbitrary all the time in the first?

A. No arbitrary to the Milwaukee except in that one group.

Q. How is the through rate fixed, that is, what relation is there, if any, to your locals or to any particular station as a basing point?

A. There is no basing-point relation, if I understand the question.

Q. Well, maybe my railroad terminology may not make it clear, but what I had in mind was this: As to wheat and its products, the through rate, ordinarily—that is, the amount of the through rate ordinarily—was the same as the amount of the local to Minneapolis, plus 7.5 cents a hundred. Now, what I want to get at is whether on your coal rates the through rate has any relation or correspondence to the other rates, or whether it is made in each station without reference to the local haul or without reference to a haul from Chicago to any particular point.

A. No, there is no relationship between the coal rates, as exists between the wheat rates. That is, the principle does

not obtain. The Duluth rate is the first factor in the fixing of the coal rates to Minnesota territory.

Q. Then the through rates, in case of coal received over the Milwaukee road (hard coal) whether by Albert Lea or by way of Minnesota Transfer, would be the rates which would compete with the Duluth rate at the stations reached by your road?

A. Yes, practically that.

Q. And you would divide the through rate made upon that basis, as you have stated?

A. Yes, sir.

Q. As I remember it, we asked you to produce this information as to wheat or wheat and its products: The number of tons transported by your road from Minneapolis to Albert Lea and there delivered to the Illinois Central for Chicago or farther points, for which the full 7.5 proportional was given to the Illinois Central and for which the Minneapolis & St. Louis road got no compensation except such as was included in the through rate over and above the 7.5 cents.

A. On wheat and flour originating at stations on the Minneapolis & St. Louis railroad west of Hopkins and destined to points on connecting lines beyond Minnesota Transfer and Albert Lea, Minnesota, upon which the 7.5 cent rate is allowed those companies as a part of the through rate from that territory, I find that *via* Albert Lea, Minnesota, there was 30,359,778 pounds.

Q. That is, in the period covered by Scott's Ex. 14?

A. Ex. 14. *Via* Minnesota Transfer, Minnesota, there was 21,606,189 pounds; or, as between the tonnage routing *via* both points 58.42 per cent passed through *via* Albert Lea and 41.58 per cent passed through Minnesota Transfer. These figures include all wheat and flour billed *via* the junctions mentioned from the portion of the Minneapolis & St. Louis road referred to, whether milled in transit or not at points west of Hopkins, but they do not include wheat originating west of

Hopkins which is milled in transit at stations between Hopkins and Albert Lea. To give the amount of the last described traffic would require the inspection of every way-bill for wheat into, and flour out of, each milling station between Hopkins and Albert Lea, for the reason that when the wheat arrives at the milling point the Chicago rate is collected, and then as to the handling of the product those particular shipments are pooled with all other wheat received from stations on our line outside of St. Paul and Minneapolis (as Jordan, Minnesota, for instance,) upon which the Chicago rate is applied for milling in transit. Therefore, when a carload of flour is billed free from New Prague, Minnesota, to Chicago, account transit *via* Albert Lea, we cannot tell from the account whether the wheat came from Boyd, Minnesota, for instance, or from Jordan, Minnesota, without looking up the copy of the way-bill and ascertaining therefrom point of origin of the wheat. This can be done, but it would take a long time to do it. On all wheat and flour originating at stations on the Minneapolis at St. Louis west of Hopkins, Minnesota, which is routed to Chicago and common points *via* Albert Lea, the connecting line beyond Albert Lea receives an arbitrary proportion of 7.5 cents per hundred weight, and as this is the proportion which would accrue to connecting lines beyond Minnesota Transfer on similar shipments routed *via* Minnesota Transfer, the earnings of the Minneapolis & St. Louis road are the same to Albert Lea as to Minnesota Transfer. There are practically no shipments of wheat handled from our territory to points reached by any connecting line. The wheat that is not marketed at Minneapolis is mostly milled in transit by milling concerns located on our line. This statement covers period July 1, 1905, to June 30, 1906, which I understand is the period covered by Scott's Ex. 14.

Q. As I remember the testimony, it appears that in some cases where the freight (speaking of wheat and its products)

originated on other lines but would be hauled through to Chicago from Minnesota Transfer by your lines,—in which case your line and its connecting line at Albert Lea would get the 7.5 cent proportional of the through rate—

A. Yes, as for instance, freight off the Great Northern road.

Q. Yes. I have forgotten whether you told us what division was made between the Minneapolis & St. Louis and the line which carried from Albert Lea to Chicago, of that 7.5 cents.

A. I don't think that you asked for the division of that.

Q. Can you give it to us?

A. The division on that rate would be a terminal of $3 per car first deducted and allowed to the M. & St. L. road, and, when traveling *via* the Illinois Central, 23 per cent of the balance of the rate added to $3 would be the Minneapolis & St. Louis' full proportion. When traveling *via* the Iowa Central, $3 per car deducted for the Minneapolis & St. Louis and allowed as a terminal and 22 per cent of the balance would make up the Minneapolis & St. Louis Company's full proportion. I don't believe that a shipment of wheat of that character figures in Scott's Ex. 14. I could not find one, and I had to go through thousands of figures; I couldn't find one single shipment.

Mr. BUTLER: No tonnage moved that way?

WITNESS: No tonnage moved that way.

Q. I suppose there are instances where some does move that way?

A. I don't think we ever had any. The rate is published in a Western Trunk Line tariff that applies *via* all roads, and we don't like to advertise the fact that we are not in for that traffic, so the chairman of the Western Trunk Line committee has always included our railroad, but we never have seen the time when we would put a box-car of our own into that traffic, and I don't think I ever saw the time when anyone

else would let their box-cars be used in the traffic, so that we really exclude ourselves from it.

Q. That is, there is not enough of shipments of wheat and its products made over your line to Chicago under that arrangement to take into account, you think?

A. No, I think not.

Q. How much per hundred weight would that be for the Minneapolis & St. Louis road on wheat and its products for its proportion of the haul from Minneapolis to Chicago, or, in other words, from Minneapolis to Albert Lea?

A. On a 25-ton car of wheat or flour it would figure 2.19 cents per hundred weight for the Minneapolis & St. Louis haul to Albert Lea.

Q. What is the average weight of a car of wheat or flour?

A. Well, of course, that is mere guess-work, but I should say 25 tons would be about the average.

Q. Is that rate for that haul remunerative?

A. No, sir.

Q. Is it compensatory?

A. No, sir.

By Mr. O'BRIEN:

Q. Mr. Tittemore, have you the statement with reference to shipments from Lake Mills which I asked you for several days ago?

A. The wheat shipments from Lake Mills, Iowa,—for the period covered by Scott's Ex. 14, I find that there was no wheat shipped from that station during that period of time.

Mr. BUTLER: That is, to any point?

WITNESS: To any point; there were no wheat shipments.

Q. Mr. Tittemore, I hand you the report of the Minneapolis & St. Louis road for the year ending June 30, 1906, (that is the period covered by Scott's Ex. 14) and ask you to state from that report what were the average freight earnings on the entire line, per ton per mile, during that year.

A. I never saw this report before; I don't know whether I can find the figures handily or not. On page 61-A of the report before me I find that the average receipts per ton per mile on Minnesota traffic was .01012.

Q. That is one cent and twelve thousandths of a cent?

A. One cent and twelve thousandths of a cent per ton per mile.

Q. Now, please turn to the next page of the same report and state what the average earnings were upon the entire line.

Mr. BUTLER: That, I suppose, includes all classes of traffic on the rails in Minnesota, that is, both state and interstate shipments of freight?

Mr. O'BRIEN: That is my understanding of it. If you would like to have Mr. Tittemore state that—

Mr. BUTLER: I don't know that he knows, Mr. O'Brien; I think he doesn't have to do with those statistics. Mr. Scott does.

WITNESS: I would have to repeat the statistics exactly from the item.

Mr. O'BRIEN: I understand that that statement just made by Mr. Butler is correct, that this amount represents the average earnings in Minnesota upon all classes of freight, both state and interstate. Now, I ask the average earnings upon the entire line.

A. I find on page 61 of the report the average receipts per ton per mile for the entire line of the Minneapolis & St. Louis to be .01153, or one cent and .153 of a cent.

The MASTER: All classes of freight,—does that include merchandise and commodity?

Mr. O'BRIEN: That statement as to the average earnings includes every character of freight carried, both merchandise and commodity, state and interstate.

Mr. BUTLER: And I guess all revenue freight, though I am not certain.

WITNESS: It doesn't include Company freight or freight hauled free.

Q. Now, I call your attention to the order of the Commission of September 6, 1906, and ask you to give the highest rate per ton per mile allowed for any class of freight by that schedule.

A. I don't believe I know what you mean.

Mr. BUTLER: Have you figured it, Mr. O'Brien?

Mr. O'BRIEN: No, I haven't figured it all yet. It won't take very long.

Q. Take class one for a haul of five miles, there is allowed 12 cents per hundred pounds, is there not?

A. Yes.

Q. Now, that would be how much for a ton?

A. That would be $2.40 a ton.

Q. For carrying a ton five miles?

A. Yes.

Q. That would be how much per mile?

A. Of first-class freight?

Q. Yes. It would give you 48 cents, wouldn't it?

A. Yes.

Q. The rate per ton per mile for that haul of that class of freight is 48 cents?

A. 48 cents.

Q. Now, turn to the schedule in Chapter 232. By that chapter the rate allowed upon soft coal for a haul of 400 miles is $1.72, is it not?

A. Yes, sir.

Q. And what is that rate per ton per mile?

A. Forty-three hundredths of a cent per ton per mile.

Q. Can you give that in mills?

A. 4.3 mills.

Q. 4.3 mills per ton per mile?

A. Yes.

Q. So that these rates as prescribed by the order of the Commission of September 6, 1906, and Chapter 232 extend from 48 cents per ton per mile—

Mr. BUTLER: On a five-mile haul or a one-mile haul?

Q. —to 4 mills and 3/10 of a mill per ton per mile?

A. Those are the two extremes given in the tariff.

Q. The average haul of freight upon the Minneapolis & St. Louis road as given in Scott's Ex. 16 is 73.98 miles, is it not?

A. Yes.

Q. And in Ex. 17 that is given as 73.71?

A. Yes.

Q. Each of those schedules referring to hauls of merchandise?

A. I think so, yes.

Q. In your judgment, is the haul of commodities greater or less upon an average than that?

A. Well, I should hate to pass judgment because I don't know.

Q. This Ex. 16 includes many carload lots?

A. Yes, such carload lots as would be contained in the classes.

Q. 73 miles as an average haul is quite high for the Minneapolis & St. Louis Company, is it not?

A. I should say it was a good average for that line.

Q. And you would not expect to find that average changed very much if confined to commodities?

A. On the whole road?

Q. Yes.

A. I would not.

Q. Or in Minnesota?

A. In Minnesota I would be inclined to think it would be a little longer on the average.

Q. Well, about how much?

A. Well, it would be very difficult for me to say, but I

wouldn't be surprised to find it a fourth greater.

Q. So that you think the average haul might be as much as between 90 and 100 miles?

A. I should think so, in Minnesota.

Q. You wouldn't be certain about that, would you?

A. Oh, no; purely a guess.

Mr. BUTLER: Isn't that contained in the report?

WITNESS: On page 61-A of the report I find the average distance haul of one ton in the state of Minnesota for the M. & St. L. road to be 94.26 miles.

Q. 94.26 miles?

A. Yes.

Q. I now hand you "Defts' Ex. B-Tittemore," which is described as a statement showing the rates upon soft coal to stations between Albert Lea, Minnesota, interstate and present intrastate as prescribed by Chapter 232, and ask you if that is a correct statement.

A. I should say it was a correct statement. I don't see any incorrect figures, but as to the mileage figures I would have to take some time to figure over. I think they are correct, though.

Mr. O'BRIEN: I desire to explain what this is: It is a schedule of the soft-coal rates from Minneapolis to Albert Lea, the present interstate rates upon the coal brought from Illinois through Albert Lea, the present rates from Duluth to the stations between Minneapolis and Albert Lea, what the rate would be under Chapter 232 based upon a continuous haul from Duluth to those stations, and the rate from Duluth to those stations based upon an independent haul to Minneapolis and an independent haul from Minneapolis to those stations, computing the rate allowed from Duluth to the Minnesota Transfer, and then, if the coal was taken by another road there, what the legislative rate would be.

Mr. BUTLER: By continuous haul you mean to assume a continuous haul upon one line?

Mr. O'BRIEN: A continuous haul upon one line, upon one legislative rate, because, of course, the rate would be lower under a continuous haul than if it were a broken haul. Now, this exhibit shows that at the present time the rate upon hard coal, the interstate rate, if the coal were brought from Illinois first to Albert Lea and then to the stations between that and Minneapolis, is $1.40 for the entire distance, and the same with regard to coal coming from Duluth, the same price is charged immediately after leaving Minneapolis that is charged at Albert Lea, 106 miles from Minneapolis. The legislative rate, on the theory of a continuous haul, is 95 cents at Minneapolis, and becomes $1.37 at Albert Lea, almost meets the present rate at Albert Lea; on separate hauls, the rate at Eden Prairie (a station immediately south of Minneapolis,) is $1.47, and would be $1.80 at Albert Lea.

Mr. BUTLER: Mr. O'Brien, at the time of the passage of Chapter 232, weren't the rates from Duluth to Minneapolis within Minnesota below 95 cents on soft coal?

Mr. O'BRIEN: I think the rate upon soft coal is 90 cents.

Mr. BUTLER: What is the fact?

Commissioner STAPLES: 90 cents.

Mr. O'BRIEN: The existing rate is 90 cents.

Mr. BUTLER: And the distance rate would be 95 cents?

Commissioner STAPLES: I think 92.

Mr. BUTLER: Nearly the same.

Mr. O'BRIEN: Nearly the same.

Mr. BUTLER: Let Mr. Staples state what the rates were in effect at the time of the passage of Chapter 232 and what the distance rates would make it if applicable between Duluth and Minneapolis, the short line in Minnesota.

Mr. O'BRIEN: Chapter 232 contains a provision that no existing rate shall be raised, even though the schedule in Chap-

ter 232 should provide for a higher rate, and we desire at this time to have the record show what the existing rate on coal was from Duluth to Minnesota Transfer, and Mr. Staples has been requested to make the statement to that effect, and he will do so, with the consent of the Master now, which I suppose we will accept.

Mr. BUTLER: Yes, certainly.

Mr. O'BRIEN: Will you state, Mr. Staples?

Commissioner STAPLES: The coal rate, as it exists at the present time, upon hard coal from Duluth to St. Paul, Minneapolis and Minnesota Transfer is $1.25 per ton; local rate, soft coal, 90 cents per ton. The rate provided in chapter 232 would be, hard coal, $1.20 per ton; soft coal, 96 cents per ton, between the same two points.

Q. The 40.1 cents which you would receive for hauling soft coal coming from Peoria, from Albert Lea to Minneapolis, would amount to 4 mills per ton per mile, would it not, practically?

A. Practically.

Q. And where that coal is delivered by your road to points beyond Minneapolis, 40 cents per ton is all that your road earns for the haul to Minneapolis, is it not?

A. Yes, but we don't engage in that traffic.

Q. Where you deliver the coal to points between Albert Lea and Minneapolis, you would realize a considerably higher rate per ton per mile than 4 mills?

A. Somewhat higher.

Q. But where any such coal is delivered at points upon your road beyond Minneapolis or on the western division of your road, you do not realize any higher rate for the haul between Albert Lea and Minneapolis?

Mr. BUTLER: That refers to southern coal?

Mr. O'BRIEN: Southern coal.

A. Well, the 40.1 cents would not figure in that division at

all; the division of the rate would be computed in a different manner altogether, if I understand your question, Mr. O'Brien, correctly.

Q. That rate of $1.40 is made to meet the Duluth rate, is it not?

A. Yes.

Q. And you meet sharp competition from Duluth as soon as you arrive at Minneapolis?

A. Yes.

Q. Consequently, you can't increase your rate beyond that point?

A. Beyond Minneapolis?

Q. Yes.

A. No.

Q. You can't increase the rate up to that point. You can only charge for the additional haul from Minneapolis, so that it is safe to say that any of your coal that goes off that division between Albert Lea and Minneapolis is paid for for the haul upon that division at the rate of 40 cents per ton?

Mr. BUTLER: You mean Duluth *via* Minneapolis?

Mr. O'BRIEN: It doesn't go, of course, to Minneapolis; it goes to the junction.

WITNESS: I presume you mean to say if it went off our line at Waseca?

Q. Yes, at Waseca or Minneapolis or Hopkins, or wherever—

A. We would not haul any of that coal into Minneapolis, and we would not divide the rate that way. I don't believe that I get exactly Mr. O'Brien's purpose in that question.

Q. Well, I suppose some of this southern coal goes to points beyond the Albert Lea division, does it not?

A. Yes.

Q. Now, you would be limited to the hauling charge of that

coal, as long as it is on the Albert Lea division, to $1.40 per ton?

A. Yes, competition fixes that.

Q. I say you are limited to that by the conditions?

A. Competition fixes the limit.

Q. And of that $1.40 a ton you receive 40 cents?

Mr. BUTLER: If it goes to Minneapolis.

A. If it goes to Minneapolis.

Q. Wherever it goes you receive 40 cents?

A. No.

Q. Of that $1.40 your road receives 40 cents a ton to Minneapolis, on the Minneapolis traffic; it gets 40 cents a ton on the traffic upon any portion of that Albert Lea division?

A. No, south of Minneapolis, if you remember, I testified that the rate on that coal coming from certain lines would be 40 per cent of the $1.40 rate, and then when coming from the Iowa Central it would be 30 per cent of the $1.40 rate, which would be 42 cents when coming from the Iowa Central, and I think it was figured about 56 cents when it came from the Illinois Central to intermediate points between Albert Lea or say to the points Manchester, Minnesota, and St. Louis Park.

Q. Now, when that coal is delivered at any of the division-points or junction-points for shipment to some point upon the western division of your road, the charge for freight up to the point that it leaves the Albert Lea division is limited to $1.40 a ton, is it not?

A. Yes, on soft coal.

Q. And of that $1.40 a ton, the proportion to the Minneapolis & St. Louis is not more than 40 cents, is it?

A. I want to answer that question, Mr. O'Brien, but I don't know just exactly how to explain it. Of course, it is on a through rate and has no relation to the Minneapolis rate. The conditions are not the same, and I never, in my own mind, for instance, in fixing the rates or in putting them in the tariff,

allow any particular amount for any particular division of the haul.

Q. Very well. We will take a concrete case, then: What is the rate upon the southern coal from Peoria to Fairfax, if there is such a rate?

A. I am quoting now from M. & St. L. and Iowa Central G. F. O. No. 1–A, and I find the rate on soft coal from Peoria, Illinois, to Fairfax, Minnesota, when routed *via* Albert Lea, $1.80 per net ton.

Mr. O'BRIEN: My attention is called to the fact that I may have overstated the provision of Chapter 232 with reference to changing an existing rate, and I would like to read Section 7 of that act, so that the exact language will be before the Master: "Section 7. If at the time of the taking effect of this act, any railroad is maintaining a rate between any two stations in this state that is less than the rate herein prescribed for the same distance, this act shall not be construed as authorizing the raising of such rate."

The MASTER: That is the way I understood you, Mr. O'Brien.

Mr. O'BRIEN: That is in connection with Mr. Staples' statement as to the rates.

Q. $1.80?

A. $1.80, per net ton.

Q. Now, of that $1.80 per ton, what amount is received by the Minneapolis & St. Louis road?

A. I quote from M. & St. L. and Iowa Central division-sheet No. 726–A (which applies on all freight); I find that between all stations in Illinois (which would include Peoria) on the Iowa Central railway, to stations Gibbon, Minnesota, to Watertown, South Dakota, inclusive, (which would include Fairfax) the rate divides one-half to each railroad.

Mr. BUTLER: That would be 90 cents a ton?

WITNESS: That would be 90 cents a ton to the Minneapolis & St. Louis railroad.

Q. The distance from Albert Lea to Fairfax is what?

A. 178 miles.

Q. And that would result in a rate of how much per ton per mile?

A. 5.1 mills per ton per mile.

Q. Now, the 40-cent rate that we have been speaking about would be 4 mills per ton per mile?

A. About that.

Q. This rate to Fairfax would be 5.1 mills per ton per mile. Now, turn to Chapter 232 and take the rate for 95 miles, which is the average haul for all classes of freight.

A. That is, all in Minnesota?

Q. Yes. I find that the rate allowed for soft coal is 80 cents per ton.

A. That is correct.

Q. Now, will you please give that per ton mile?

A. .84 of a cent; 8.4 mills per ton per mile.

Q. Now, the larger the tonnage contained in a car the greater the economy in hauling it, I presume?

A. That is the theory of railroad operation; that is, the net tonnage, of course, in a car.

Q. I call your attention to Chapter 232, which provides that the minimum weight to constitute a carload of soft coal should be 30,000 pounds.

A. Yes.

Q. Which would be 15 tons?

A. Yes.

Q. We have been computing this matter, so far, where we have referred to carloads at 25 tons.

A. That is 50,000 pounds.

Q. Now, if you can distribute coal from the Illinois coalfields at these rates which bring you 4 mills per ton per mile,

and on the western division, five mills per ton per mile, how can you claim that the schedule provided in Chapter 232 is insufficient or unfair, in and of itself, when it allows a revenue for the average haul upon your road of 8 mills per ton per mile?

Mr. BUTLER: We will note an objection to that, as purely argumentative; that it already appears conclusively that no such rate per ton per mile can be obtained on soft coal, by this Company or any other company, moved in Minnesota, as a general proposition. Let it be stated further upon the record, that the generalization made by the question is based upon a single instance on the western division and does not involve the rate per ton per mile earned upon any of the traffic, as for instance, the traffic moved by this Company *via* Albert Lea to the points beginning at Manchester and to St. Louis Park where, it is manifest that the rate per ton per mile must vary much indeed. Now, if the witness' conclusion is to be taken with respect to a comparison of rates or the reasonableness of them, the situation ought to be stated. In the first place, argumentative examination is, as a rule, of little value, but in this particular instance, may it please the Master, the generalization is made upon a single instance in the western division, attention having been called to other glaring instances. Now, if we assume the principle of this schedule of rates applied to a shipment of coal by continuous carriage from Peoria to Minneapolis, a distance of more than 400 miles, the amount that would be allowed for the last 100 miles, (and I think the last 200 miles,) by this act would be 2 mills per ton per mile or less on soft coal. Now, you see the hypothesis in the question finds no support, either in the facts shown to exist touching the traffic on this road, because it does not appear that it does or would or could obtain any 8 mills per ton per mile on coal moved in Minnesota under this rate, and because it assumes another rate of compensation generalized from a single instance, and because it does not assume the application to the interstate haul of the

principle underlying the structure of the schedule. For example, while we are on the subject of ton per mile, it appears that to move one ton of first-class freight five miles a rate of 48 cents is allowed. That includes, manifestly, from an inspection of the schedule itself, ten cents per hundred pounds for two terminal services. If your Honor has the class schedule before you, I can show you by the figures just how that works.

The MASTER: I think, if the witness can answer, it is proper for him to do it.

A. Practically, the 8 mills per ton per mile does not apply to any traffic that moves on our line, in the question asked. We have no coal and can secure no coal at Minneapolis that would meet the competition of the other lines in the district to which the counsel has referred. When you speak of the rates "within themselves," I don't know what is meant. In print .83 of a cent per ton per mile is more than .43 of a cent per mile per ton, but I would have to have conditions stated, tonnage stated, mileage stated, actual conditions, practical conditions stated, before I could tell anything about it. The theory, in transportation or in making rates, is that, the farther you go, the longer the haul, (the far straightaway haul), your rate per ton per mile gradually recedes, and while that doesn't have anything to do with the making of the rate on coal from Peoria to Fairfax in our case, that is a principle generally applicable to railroad traffic.

Q. That is a perfectly sound principle, isn't it?

A. Well, it has been used so long I should say that its soundness had been probably fixed as a general principle; but competition has fixed that.

Q. But it is a principle that is recognized by all rate-makers, is it not?

A. I think so.

Q. That the longer the haul the more the rate per ton per mile decreases?

A. That has been the theory where conditions permitted.

Q. And of course the main desire has been to secure equality of rates as much as possible, has it not?

A. Oh, I suppose that is true. I never happened to be on a road that could figure that way.

Q. I know it is a difficult thing to attain, but in so far as it can be attained, it is desirable for the roads themselves and for the public and for every person concerned, is it not?

A. Yes, if I know what equality means in connection with a freight rate.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. What is the first junction-point south or west of Minneapolis between your road and the Chicago, Milwaukee & St. Paul railway?

A. There is a junction up near Minneapolis somewhere near the station, but the junction with which we have any track connections would be at Chaska.

Q. I understand you to claim that you would be compelled to meet the Milwaukee rate at that point?

A. On coal?

Q. On coal.

A. Yes.

Q. Now, what is the distance from Duluth to Chaska?

A. 203 miles is the Chicago, Milwaukee & St. Paul distance.

The MASTER: By the Northern Pacific, I suppose?

Mr. O'BRIEN: I think I ought to explain that. That is by the Northern Pacific to Minneapolis or Minnesota Transfer, and the Milwaukee road to Chaska.

The MASTER: Yes, that is what I supposed it was.

Mr. O'BRIEN: We shall claim, later in this case, that there is no continuous line, by the Milwaukee road or anything else, from Duluth to Chaska or any of these points; that the ar-

rangement between the Milwaukee and the Northern Pacific is a purely voluntary arrangement depending upon a private contract between those two roads, which can be abrogated by them at any time they see fit. But this question is now assuming that that contract does create a condition of things which is analogous to one continuous line.

Q. Now, the rate upon soft coal for 203 miles by Chapter 232 would be the rate given for 210 miles, and that would be $1.19?

A. $1.19 is what I understand the rate would be.

Q. And that would be how much per ton per mile?

A. 5.85 mills per ton per mile.

Q. What is the through rate to Chicago upon wheat and wheat products from, let us say, Fairfax *via* Albert Lea?

A. I quote from supplement No. 26, M. & St. L., and Iowa Central G. F. O., 6000. The rate on wheat and flour from stations Gibbon to Franklin, Minnesota, inclusive, (which would include Fairfax) is 16 cents per hundred pounds.

Q. Of that rate, 7.5 cents would go to the Iowa Central?

A. Well, to Chicago 7.5 would go to the Illinois Central.

Q. To the Illinois Central?

A. Yes.

Q. And there would be retained by you 8.5 cents?

A. Yes, 8.5 cents.

Q. Which would be $1.70 per ton?

A. Yes, sir.

Q. What is the distance from Fairfax to Albert Lea?

A. 178 miles.

Q. And that would be how much per ton per mile?

A. .96 of a cent per ton per mile; 9.6 mills.

Q. What is the rate allowed by Chapter 232 for a haul of 180 miles? which is the rate that would have taken.

A. For 180 miles under the statutory act, the rate on wheat

and flour would be 9.1 cents per hundred pounds; it would be 1 cent per ton per mile.

Q. What is the rate upon coarse grain from Fairfax to Chicago, *via* Albert Lea?

A. I quote from Supplement 26, M. & St. L. and Iowa Central G. F. O., No. 6000, and I find the rate on coarse grain (that is, corn, oats, rye and barley,) to Chicago from stations given to Franklin, Minnesota, inclusive, (which takes in Fairfax) is 16 cents per hundred pounds.

Q. The rate allowed by chapter 232 for a haul of that distance (180 miles) is 8.1 cents, is it not?

A. Yes, sir.

Q. While the proportion of that through rate which would be retained by the M. & St. L. road under the rates in force during the period covered by Ex. 14 would be 8.5 cents per hundred pounds?

A. 8.5 cents, yes, sir.

Q. You said yesterday that the rate on lumber from the Twin Cities to Chicago was 10 cents per hundred pounds?

A. Yes, sir.

Q. Of that rate, when it is hauled *via* Albert Lea, what is retained by the Minneapolis & St. Louis road?

A. When from Minneapolis and Minnesota Transfer, $3 per car is first deducted for the M. & St. L. terminal and allowed to them, and the balance divides 23 per cent to the M. & St. L. road.

Q. What is the average weight of a carload of lumber?

A. Well, that would be difficult for me to say, but I should think, Mr. O'Brien, 20 tons would be a good average rate of commodity.

Q. That would be $40 a car?

A. $40 per car.

Q. Of which $3 would be retained by the M. & St. L., and 23 per cent of the balance?

A. Yes, sir.

Q. That would be $11.51 a car?

A. Yes, sir.

Q. And that would be how much per ton?

A. About 51 cents per ton.

Q. Which would be about 5 mills per ton per mile?

A. Yes, sir, one-half cent a ton a mile.

Q. One-half cent a ton a mile that the Minneapolis & St. Louis would receive for hauling the lumber from Minneapolis to Albert Lea?

A. Yes, sir.

Q. Now, the rate allowed by Chapter 232 for hauling lumber 106 miles is 7 cents per hundred, is it not?

A. No; that would be 110 miles, which would be 9.3 cents a hundred pounds.

Q. And that would be how much per ton?

A. $1.86 a ton.

Q. And for a haul of 110 miles that would be how much per ton per mile?

A. 9 mills or nine-tenths of a cent per ton per mile.

Q. It would be 18 mills, wouldn't it?

A. Oh, on 100 miles, yes.

Q. 110 miles.

A. Yes; 1.8 cent per ton per mile.

Q. 18 mills per ton per mile?

A. Yes.

Q. As against 5 mills per ton per mile which you now receive?

A. Yes.

Q. In speaking of these rates we have referred to Fairfax very often on the western division of the road, but, as a matter of fact, about the same proportion would extend over all of it with regard to these particular hauls, would it not?

A. Do you mean about the same rate per ton per mile?

Q. About the same comparisons of rates.

Mr. BUTLER: Mr. O'Brien, the division is Gibbon to Franklin, and I don't know where it is, and I intended to ask you at your convenience to let it appear that Gibbon is one station east of Fairfax on the division-sheet from Gibbon to Franklin.

Mr. O'BRIEN: Gibbon is the first station east of Fairfax on what I call the western division of the Minneapolis & St. Louis, and Franklin is the first station west of Fairfax.

WITNESS: I gave it just as it was in the tariff. I can't say whether that was representative or not unless I figure it out.

Q. The rate allowed by Chapter 232 for hauling lumber 110 miles is exactly 16.9 mills, is it not, instead of 18 mills? it is a little less than you thought it was?

A. Yes, you are right, Mr. O'Brien; 16.9 mills.

Q. In giving the mileage from Fairfax to Albert Lea at 178 miles, you have assumed that the grain would not be brought to Minneapolis, have you?

A. No, it would not be brought to Minneapolis. The distance from Fairfax to Albert Lea you said, Mr. O'Brien?

Q. Yes.

A. That would be figured by our engineering department; that is, he would give us the distance and we would haul it *via* Hopkins; I don't know how he figured the distance, but it wouldn't go through Minneapolis.

Q. Hopkins is about how far from Minneapolis?

A. About 9 miles.

Q. Now a great deal of this grain would be actually brought through Minneapolis, would it not, any of it that was milled in Minneapolis?

A. There was no milling in Minneapolis at that time; there is a little milling now.

Q. But during the period covered by this report, was none of this grain milled in transit at Minneapolis?

A. No, sir.

Q. And whatever went to the Illinois Central *via* Albert Lea all went by way of Hopkins?

A. All went by way of Hopkins.

Q. Now, is this proportional rate that you received, as you have described, from grain and grain products, remunerative?

A. That is, the proportion south of—

Q. The proportions you have received as you have described?

A. Up to Albert Lea?

Q. Yes, up to Albert Lea.

A. Well, I couldn't say.

Q. You don't know whether it was compensatory or not?

A. I shouldn't want to say, because I can't tell whether that traffic alone gave us any net revenue or not; I have no way of telling it.

Q. The rate upon lumber which you have given, the proportional rate which your road retained, was that remunerative and compensatory?

A. No, sir.

Q. It was not?

A. I think not; no tonnage to amount to anything.

Mr. O'BRIEN: We now offer Defts' Ex. B–Tittemore in evidence.

Q. I now show you a sheet marked "Defts' Ex. C–Tittemore," purporting to be a table of rates in force upon the Minneapolis & St. Louis road upon the commodities mentioned in Chapter 232 during the period covered by Scott's Ex. 14. I find by looking at this sheet that, for instance, at Chaska, 29 miles from the Minnesota Transfer, the rate on flax, wheat and coarse grain, is 6 cents per hundred pounds on each.

A. Yes, sir.

Q. That at Jordan, 39 miles from Minnesota Transfer, the rate upon flax, wheat and coarse grain, is 7 cents per hundred pounds upon each.

A. Yes, sir.

Q. That at Montgomery, 56 miles from the Minnesota Transfer, the rate upon flax is 8 cents, upon wheat 7.5 cents, and upon coarse grain, 7 cents?

A. Yes, sir.

Q. Will you please say why, if your road established rates which were the same for the carriage of flax, wheat and coarse grain from some of its stations, the charges made for transporting those various commodities varied at other stations?

A. Those rates were not established by our Company, they were established by the Railroad and Warehouse Commission of the state.

Q. Can you refer to an order of the Railroad and Warehouse Commission establishing those rates?

A. I cannot refer to an order.

Q. Do you not mean by that that those rates were the rates fixed in schedules filed by the companies with the Railroad and Warehouse Commission?

A. Which we could not change without their consent.

Q. Which you could not change without their consent?

A. Yes.

Q. And we are having a good deal of difficulty in getting your consent.

A. That is so, I guess.

Q. Well, that is what we are trying to do now, Mr. Tittemore. So you have no explanation of that, then?

A. Oh, there may be an explanation, but I couldn't tell from looking at that schedule. In the first place, they are commodity rates between those points, and have no relation to the traffic. In other words, the traffic doesn't run or travel on those rates. Possibly the distance to Montgomery from Minnesota Transfer over the Milwaukee road might fix the rates, and the Milwaukee road's rates from Chicago or Milwaukee to those points, or from those points to those points might fix the rela-

tion; I couldn't say, because I would have to go back to the time that Mr. Hopkins was in my position to determine that point.

Q. Now, I find that from Solbergs Point (24 miles from the Minnesota Transfer) to Winthrop, 76 miles from Minnesota Transfer, the same rate is charged for the carriage of flax, wheat and coarse grain; is it not?

A. Yes, sir.

Q. And at Gibbon, the next station beyond Winthrop, one-half cent more per hundred is charged for the carriage of flax than for wheat or coarse grain?

A. Yes, sir. The same rate is charged on the three commodities; that is, flax, wheat and coarse grain, from Solbergs Point to and including Winthrop, Minnesota.

Q. Now, at Gibbon, flax is about 8 per cent higher than wheat and coarse grain, is it not?

A. Flax is 9 cents and wheat and coarse grain 8.5.

Q. Well, that would be between 6 and 8 per cent, would it not?

A. 5 per cent.

Q. Well, we will take it at Redwood. At Redwood the rate on flax is 10.5 cents and upon wheat and coarse grain 9 cents?

A. Yes.

Q. What is the percentage of difference there? three-eighteenths, isn't it?

A. Well, yes, I will have to say that.

Q. Between 15 and 20 per cent?

A. Yes.

Q. At Wood Lake, 136 miles, the rate on flax is 11, while it still remains, upon wheat and coarse grain, 9 cents?

A. Yes.

Q. A still larger percentage?

A. Yes.

Q. Will you please point out where Delhi is upon this map?

A. Delhi is here (pointing) 119 miles from Minnesota Transfer.

Q. The rate upon flax at that point is 11 cents, wheat 9 cents and coarse grain 9 cents?

A. Yes.

Q. Now, where is Clarkfield?

A. Clarkfield is right here, west of Hanley Falls, the second station west of Hanley Falls on this map.

Q. And how far from the Minnesota Transfer?

A. 152 miles.

Q. And the rate there is still 11 cents upon flax, while upon wheat and coarse grain it has been increased to 9.5 cents?

A. Yes.

Q. Why was it necessary to maintain the same rate from Clarkfield (152 miles from the Transfer) and from Delhi? (only 119 miles from the Transfer).

A. On flax?

Q. Yes.

A. Well, the Chicago competition enters into that flax rate to such an extent that I wouldn't undertake to answer your question in detail.

Q. And if it was necessary to maintain the same rate upon flax between those stations, why should not the same rate have been maintained upon wheat and coarse grain?

A. No relation between the two and there never should be the same rates.

Q. Can you give any reason why there was a change made in the rate upon coarse grain at Hazel Run, the first station east of Clarkfield, while there was still no change made upon flax?

A. I think that the fact would be found that the Granite Falls competition fixed the rates on the grain, and that the rates of the Great Northern road at Cottonwood may have fixed it on the flax. But, in any event, if I made the tariff I can as-

sure you that flax would go up just as fast as I could put it up and wheat would be kept on the same basis in a blanket condition. I didn't fix those rates, and I can't tell about them until I go to my office and find out about them.

Q. But you can give no explanation—

A. Competition fixes every one of those rates, Mr. O'Brien.

Q. You can give no reason, whether from competition or anything else, why if from half of the stations upon your road you charge the same price for flax and wheat and coarse grain, from the other half you charge different prices for those commodities?

A. I can, and I can give a reason in every case if I can go to it.

Q. You mean you can do it now?

A. Well, take Chaska. I have no doubt that the Milwaukee fixed the rate on the three, but we meet it by competition. There is not a point you have named there that we have absolute power to make a rate.

Q. Maybe we can find that out. Let us take the Milwaukee rates.

A. You can't find it out from anything you have in this room.

Q. Well, maybe we have.

A. No, you can't. That relation of the rates was fixed long before your time or mine on law and railroading.

Q. I show you the rate-sheet of the Chicago, Milwaukee & St. Paul road.

A. This is a copy of the sheet purporting to be the rates.

Q. I find, according to this, the rate upon flax from Chaska was 5.6, wheat 6 cents, and coarse grain 6 cents.

A. Yes.

Q. And I am informed that the actual rate from Chaska is 6 cents for each of them. Now, your rate from Chaska is also 6 for each of those three, is it not?

A. Yes. In the Western Classification the classification provides for a rate on flax, but not upon wheat or coarse grain, and it is very evident that when we came to reduce our Class D rate, which is the rate on flax in the classification, that we had to make that rate at Chaska on flax, although we wanted to make a higher rate on flax, but we couldn't carry, in the commodity tariff, a higher rate than the classified rate. That fixed our flax rate and had nothing to do with fixing our coarse grain or with the rate except that we can't get a higher rate in that, excepting on wheat and coarse grain, than we do upon flax. It is pretty evident what fixed those three rates the same at those points, but that wouldn't carry all the way out.

Q. Will you please point out on the map the location of Arlington?

A. It is on the Minneapolis & St. Louis road southwest of Norwood.

Q. How far from the Minnesota Transfer?

A. Sixty miles.

Q. Your rate upon soft coal to that point from Duluth is $1.80 per ton, is it not?

A. $1.80 on soft coal.

Q. That same rate ($1.80) is continued to Hazel Run?

A. Hazel Run is the first station west of Hanley Falls, 305 miles from Duluth.

Q. Arlington is 211 miles from Duluth, is it not?

A. Yes.

Q. Your rate upon hard coal at Arlington is $2.05?

A. Yes.

Q. And that rate also continues to Hazel Run?

A. Yes, sir.

Q. If $2.05 is a fair charge to Arlington, 211 miles from Duluth, how can that also be a fair rate to all of the stations to Hazel Run, 305 miles from Duluth?

A. We haven't any power to fix the rate, and it might not

be fair, I don't know, but under the conditions we were compelled to make that rate to meet competition.

Q. You have the short haul from Minnesota Transfer to every division-point in the state, I think you said.

A. I was testifying on the Duluth rate.

Q. Well, that is true,—that you have the short haul from Minnesota Transfer to every junction-point upon your road?

A. We may have, yes, to Gibbon, for instance, but—

Q. You said you had the short haul from Minnesota Transfer to every junction-point upon your road?

A. Yes, but I am not talking about junction-points.

Q. So that no road is in a position, by reason of the short haul, to put in an unfair competitive on that, is it?

A. Every road that has a shorter line to any point paralleling us fixes the rate at our points. Now, I said at junction-points from Minneapolis but I didn't say that the distance from Minnesota Transfer to Buffalo Lake, for instance, is not less than the distance to Fairfax, and if the distance was less from Minnesota Transfer to Buffalo Lake, as it proves to be, why then the rate at Fairfax would be the rate at Buffalo Lake; competition fixes that and distance has nothing to do with it.

Q. What is the competitive condition that fixes the rate on this stretch of road I speak of now, the Eastern Minnesota, at Hanley Falls?

A. I think the Eastern Minnesota at Hanley Falls and the Northwestern at Redwood.

Mr. BUTLER: Isn't it the Willmar and Sioux Falls at Hanley Falls, Mr. O'Brien?

Mr. O'BRIEN: Yes, it is part of the Great Northern system.

WITNESS: Hanley Falls might do it, Vesta, on the Milwaukee, might do it, Redwood Falls might do it; Olivia, Danube, Renville, Sacred Heart, all of those stations might fix it.

Q. What is the distance from Duluth *via* the Willmar & Sioux Falls, to Hanley Falls?

A. It is 243 miles from Duluth, as I figure here on this map, but I understand the Great Northern do not use continuous mileage in making their rates.

Q. There is no continuous mileage in Minnesota from Duluth to Hanley Falls, is there?

A. I think not, for the Great Northern road.

Q. There is no continuous mileage to Granite Falls in Minnesota, is there?

A. I think so.

Q. On what road?

A. The Chicago, Milwaukee & St. Paul.

Q. And what is the distance from Duluth to Granite Falls?

A. 282 miles.

Q. The rate which would be allowed upon soft coal under Chapter 232 for that haul would be $1.49, would it not?

A. $1.49.

Q. And upon hard coal would be $1.87?

A. Yes.

Q. And the reason for that same rate under that distance which you give is because of competition?

A. Competition as between the commodity itself and as between the carriers who carry it and the industries that use it.

Q. What is the rate upon merchandise of the first class from Chicago to St. Paul?

A. Sixty cents.

Q. And what proportion of that is received by the Minneapolis & St. Louis road for the haul from Albert Lea to Minneapolis?

A. I quote from M. & St. L. Division-sheet No. 41, and I find that Chicago and stations on the Illinois Central railroad (taking same rates as provided by current tariffs to St. Paul, Minneapolis and Minnesota Transfer by Albert Lea,) the Minneapolis & St. Louis' proportion of the through rate on less than carload business would be, first, deduct 2½ cents per

hundred pounds, and allow as a terminal to the Minneapolis & St. Louis road, and then 23 per cent of the balance added to that is the total proportion of the Minneapolis & St. Louis Company out of the 60-cent rate, which is 15.72 cents per hundred pounds to the Minneapolis & St. Louis road, total.

Q. The rate allowed by the order of September 6th for a haul of 110 miles is 32.58 cents, is it not?

A. 32.58 cents per hundred pounds. That is the distance rate.

Q. What is the through rate from Chicago to Fairfax *via* Albert Lea? When I say what is the through rate I always am referring to the period covered by Exhibit 14.

A. The rate from Chicago to Fairfax, Minnesota, first class, would be 70 cents per hundred pounds.

Q. And of that what would be retained by the Minneapolis & St. Louis?

A. I quote from M. & St. L. Division-sheet No. 41, and I find the divisions between all stations—that is, between Chicago and stations on the Illinois Central railway (taking the same rates as provided by the tariffs to Fairfax,) the first class rate would be divided 50 per cent to the Illinois Central road and 50 per cent to the M. & St. L.

Q. That is, you would receive 35 cents per hundred pounds for hauling merchandise of the first class from Albert Lea to Fairfax?

A. Yes.

Q. A distance of 178 miles?

A. Yes.

Q. And the rate allowed by the order of the Commission of September 6th for hauling merchandise 180 miles is 46.30 cents?

A. Yes.

Q. What was the rate from Chicago to Dawson on the Minneapolis & St. Louis?

A. I quote again from M. & St. L. and Iowa Central G. F. O. 7000, (in fact, these first class I have been giving are quoted from M. & St. L. and Iowa Central G. F. O. 7000) and the first class rate between Chicago and Dawson, Minnesota, is $1 per hundred pounds.

Q. Of which the Minneapolis & St. Louis would retain fifty cents?

A. Well, I am not sure in that case; it divides differently right along. The Minneapolis & St. Louis' proportion would be 60 per cent or 60 cents per hundred pounds, as shown by M. & St. L. Division-sheet No. 41.

Q. And the distance would be what?

A. 253 miles from Albert Lea to Dawson.

Q. The rate for 250 miles for freight of the first class is 55.12 cents, is it not?

A. Yes.

Q. What is the rate from Minneapolis to Fairfax of merchandise of the first class upon your road?

A. 28.7 cents per hundred pounds.

Q. That is how many miles?

A. 86 miles, as fixed by our distance table. It would be 86 as per G. F. O. 1800-B, and all the distances there for the M. & St. L. road are out of that table.

Q. The rate allowed for the 90-mile haul which Fairfax would take by the order of the Commission is 28.66 cents, is it not?

A. Yes, sir.

Q. What is the rate from Minneapolis to Dawson?

A. The first class is 43.4 cents per hundred pounds.

Q. The distance is—?

A. 161 miles.

Q. That would take the rate for 165 miles, which, according to the order of the Commission, is 43.36 cents?

A. Yes, sir.

Q. What is the rate from Minneapolis to Manchester on the southern or Albert Lea division?

A. First class 31.6 cents from Minneapolis.

Q. And the distance is what?

A. 100 miles.

Q. The rate for 100 miles by the order of the Commission is 30.62 cents?

A. Yes, sir.

Q. On merchandise of the first class?

A. Yes, sir.

Q. Are your present rates for merchandise of the first class compensatory?

A. I couldn't say. I think not.

Mr. DURMENT: Is there any way, that you know of, of finding out?

WITNESS: It would take me about one year to find out, to satisfy myself, if I owned the railroad and was determined to do it, because there is no way of doing it. The rates, all of the rates, all of the merchandise rates, as I have stated before, in my judgment, all over the western country, are based too low and do not stand their proper share of the cost of transportation. I speak of the class rates.

Q. Now, we will take up the second class rates. What is the rate upon second class matter from Chicago to Minneapolis *via* Albert Lea?

A. The M. & St. L. and Iowa Central G. F. O. No. 7000 makes the second class rate from Chicago to Minneapolis *via* Albert Lea 50 cents per hundred pounds.

Q. Of which the Minneapolis & St. Louis receives—?

A. Receives an arbitrary of 2½ cents for terminal added to 23 per cent of the balance, which is 13.42 cents per hundred pounds.

Q. 13.42 cents per hundred pounds for your haul of 106 miles?

A. Yes.

Q. The rate allowed by the order of the Commission of September 6th for the haul of 110 miles for merchandise of the second class is 27.16 cents?

A. Yes, sir.

Q. What is the rate from Chicago to Fairfax?

A. The second class rate from Chicago to Fairfax is 56 cents per hundred pounds.

Q. Of which the Minneapolis & St. Louis receives—?

A. 28 cents.

Q. The order of the Commission allows for carrying merchandise of the second class 178 miles (the rate allowed for 180 miles) 38.58 cents, does it not?

A. Yes, sir.

Q. Now, let us go to Dawson. Give me the Chicago rate to Dawson and the proportion maintained by the Minneapolis & St. Louis.

A. The second class rate from Chicago to Dawson is 78 cents, of which the Minneapolis & St. Louis gets 46.8 cents per hundred pounds.

Q. And the rate allowed by the Commission's order for a haul of 260 miles is 46.75 cents?

A. Yes.

Q. That is the distance to Dawson from Albert Lea?

A. 253 miles. It takes the 260 rate.

Q. What is the rate from Minneapolis to Fairfax upon the Minneapolis & St. Louis?

A. The second class rate from Minneapolis to Fairfax is 23.9 cents per hundred pounds.

Q. And the rate allowed by the Commission's order for second class for a haul of 100 miles is 25.52 cents?

A. Yes, sir.

Q. What is the rate to Dawson?

A. 36.1 cents per hundred pounds on second class.

Q. And that distance is—?

A. 161 miles.

Q. And the rate for 165 miles by the Commission's order for second class matter is 36.13 cents?

A. Yes, sir.

Adjourned until Friday morning, August 21st.

FEDERAL BUILDING, St. Paul, Minn., Friday August 21, 1908, the hearing was resumed at 10 o'clock A. M.

JAMES N. TITTEMORE,
recalled for further cross-examination, testified.

By Mr. O'BRIEN:

Q. What was the rate from Chicago to Minneapolis upon merchandise of the third class?

A. I quote from M. & St. L. and Iowa Central G. F. O. No. 7000.

Mr. BUTLER: And when was that in force?

WITNESS: This is effective December 30, 1905. The third class rate between Chicago and Minneapolis, 40 cents per hundred pounds.

Q. And what portion of that was received by the Minneapolis & St. Louis for the haul from Albert Lea to Minneapolis?

A. I quote from M. & St. L. Division-sheet No. 41. Between Chicago and stations taking Chicago rates, first deduct 2.5 cents per hundred pounds for the Minneapolis & St. Louis terminal, 23 per cent of the balance added to 2.5 cents makes 13.42 cents per hundred pounds, which is the proportion of the Minneapolis & St. Louis road out of the 40-cent rate.

Q. For the haul from Albert Lea to Minneapolis?

A. Yes, sir.

Q. The amount allowed by the Commission's order for a

haul of 110 miles is 21.72 cents?

A. Yes, sir.

Q. What was the rate from Minneapolis to Albert Lea?

A. I quote from M. & St. L. G. F. O. No. 1200–A, which is the tariff out of which I took Minneapolis figures yesterday, and the third class rate is 21.1 cents per hundred pounds. Instead of quoting from M. & St. L. 1200–A, this last rate quoted, I should prefer to say, was quoted from M. & St. L. G. F. O. 15,-000, or the Railroad and Warehouse Commission No. 75; the third class rate was 21.1 cents per hundred pounds. That tariff was effective November 15, 1906.

Mr. BUTLER: Took effect then?

WITNESS: Yes. Those are the rates that I consider put in pursuant to the Commission's order.

Q. Well, I asked you for the rates in effect during the period covered by Scott's Ex. 14.

A. Page 544 of the record (transcript) made it plain that Mr. O'Brien wanted the rates covered by Ex. 14, but I think I had Ex. 16 in my mind.

Q. Do I understand, then, that all of your testimony of yesterday with reference to state rates, was based upon a tariff which became effective November 14th?

A. November 15, 1906, yes, sir; that is, so far as the Minnesota state rates are concerned.

Q. So that, so far as the Minnesota rates were concerned, it was practically the Commission's order?

A. Yes, sir.

Q. Which accounts for the similarity that we found in your rates and in the rates prescribed by the Commission?

A. Yes, sir.

Mr. BUTLER: The order of the Commission was put into effect, if your Honor remembers, and the figures would naturally be varied a little on account of the difference in mileage.

WITNESS: Short mileage.

Q. But insofar as the interstate rates were concerned, the rate that you gave was the correct rate?

A. Covering the period of Scott's Ex. 14.

Q. Well, the rates that were in effect prior to the Commission's order?

A. Yes, sir.

Q. But the actual rates which you gave for state traffic were after the Commission's order?

A. Yes, sir.

Q. Have you with you the tariff-sheets showing the rates in force for state traffic prior to the order of the Commission?

A. Yes, sir, I have.

Q. Will you please give us the tariff upon your road in force prior to the order of the Commission, on first class, from Minneapolis to Albert Lea?

A. 38 cents per hundred pounds.

Q. Second class from Minneapolis to Albert Lea.

A. 30 cents per hundred pounds.

Q. Third class.

A. 22 cents per hundred pounds.

Q. Now, from Minneapolis to Fairfax.

A. Minneapolis to Fairfax, first class, 36 cents per hundred pounds; second class, 31 cents per hundred pounds; third class 25 cents per hundred pounds.

Q. Minneapolis to Dawson.

A. First class, 52 cents per hundred pounds; second class, 44 cents per hundred pounds; third class, 34 cents per hundred pounds. I am quoting from M. & St. L. G. F. D. No. 4580–A, Minnesota Railway Commission No. 15, effective August 22, 1904.

Q. Was there a through tariff from Chicago to Cedar Lake in effect before the order of the Commission of September 6th?

A. I don't think it is a point in our tariff at all.

Q. Well then, say Ormsby.

A. There was.

Q. What was that, upon first, second and third classes?

A. I quote from M. & St. L. G. F. O. No. 7000, and the rate from Chicago to Ormsby, Minnesota, first class, 72 cents; second class, 58 cents; third class, 43 cents.

Q. Now, what is the distance from Chicago to Ormsby over the route which such merchandise would be carried?

A. Well, we carry Ormsby at least six ways, and merchandise would be as apt to come one way as the other. Is there any particular route you would want us to figure, or will we figure all?

Q. Well, figure the shortest route for your own haul; I am willing you should.

A. I am speaking of natural routes.

Q. Well, take your most favorable route.

A. In one case we would haul the traffic 32 miles by a favorite route; *via* Estherville we would haul 32 miles. In another case we would haul it 128 miles, but we haven't the Chicago mileage by the foreign lines.

Q. In either case, the proportion of the through rate which you would receive would be the same, I presume?

A. I don't think so.

Mr. BUTLER: That is, Minnesota Transfer would be 128 miles?

WITNESS: Yes. Waseca would be a different distance; Albert Lea would be a different distance; Storm Lake would be another distance; Des Moines would be another distance; Perry would be another distance; Corwith would be another distance. I am quoting divisions from M. & St. L. Division-sheet No. 324, which would cover Ormsby traffic when coming to us at Estherville, Iowa, *via* Chicago, Rock Island & Pacific Railway. The Minneapolis & St. Louis proportion would be 40 per cent. of the through rate.

Q. And that would be how much?

A. In the case of first class the M. & St. L. would receive 28.8 cents per hundred pounds; second class, 23.2 cents per hundred pounds; third class, 17.2 cents per hundred pounds.

Q. That would be for a haul of what distance?

A. Of 32 miles.

Q. Did you receive any tonnage?

A. I think very likely we did; in fact, I presume that the tonnage for Ormsby would go that way, but we have no power over the flow of the traffic.

Q. When the tonnage was received by you at the Minnesota Transfer, the through rate was the same, was it not?

A. The through rate would be the same.

Q. And your haul would be how long?

A. 138 miles. I am quoting now from M. & St. L. Division-sheet No. 850–A, and while the division-sheet was effective July 1, 1908, the divisions I am quoting were in force at the time covered by Scott's Ex. 14 on the traffic we are talking about now. Routed *via* Minnesota Transfer, the M. & St. L. would get one-half of the rate out of the three classes for its haul from Minnesota Transfer to Ormsby, Minnesota.

Mr. BUTLER: One-half of the Chicago rate?

WITNESS: Yes. That would amount to, on the three classes, in cents per hundred pounds, first class, 36 cents; second class, 29 cents; third class, 21.5 cents, per hundred pounds.

Q. What was the local rate from Minneapolis to Ormsby prior to the order of the Commission?

A. I quote from M. & St. L. G. F. D., 4580–A, Minnesota Railroad Commission No. 15, and the rates from Minneapolis to Ormsby, Minnesota, would be, first class 40; second class 32; third class 24 cents per hundred pounds.

Q. The rates given by the order of the Commission for a haul of 135 miles are, first class 37.48; second class 31.23; third class 24.98 cents per hundred pounds?

A. Yes, sir.

Q. What was the rate from Chicago to Minneapolis upon fourth class merchandise?

A. I quote from M. & St. L. G. F. O. No. 7000, and find the fourth class rate between Chicago and Minneapolis to have been 25 cents per hundred pounds.

Q. And what proportion of that did your road, the Minneapolis & St. Louis, receive for the haul from Albert Lea to Minneapolis?

A. I quote from M. & St. L. Division-sheet No. 41: First deduct 2.5 cents per hundred pounds for the M. & St. L. terminal, then 23 per cent of the balance added to 2.5 cents gives the M. & St. L.'s proportion, 7.67 cents per hundred pounds.

Q. What was the local rate from Minneapolis to Albert Lea?

A. I quote from M. & St. L. G. F. O. 4580-A, Minnesota Railway Commission No. 15, fourth class rate from Minneapolis to Albert Lea, 16 cents per hundred pounds.

Q. Was that the rate prior to the order of the Commission?

A. Yes.

Q. The rate provided in the order of the Commission for a haul of 110 miles is 16.29 cents?

A. Yes, sir.

Q. This is the first instance in which the Commission's rate has exceeded the local rate which was in force prior to the order of the Commission, is it not?

A. I would have to go over those figures again.

Q. You remember our figures as you have given them?

A. I remember the figures, and I think that is correct, but then I haven't them in my mind.

Q. That is my recollection. As has been pointed out by the counsel for the Complainant, this merchandise order was made upon a precise mathematical scale?

A. I believe that is so.

Q. Can you give any reason why the rates established by

your road should not bear the same relation to each other?

A. No.

Q. That there should not be some mathematical relation between them?

A. Decorum never cut much of a figure in my railroad rates.

Q. The Attorney General suggests that the only rule, Mr. Tittemore, that you have followed, was to get what the traffic would bear; is that it?

A. I imagine so, if competition would let me; I think the Attorney General is about right.

Q. What was the through rate from Chicago to Fairfax upon fourth class matter?

A. I quote from M. & St. L. G. F. O. 7000, and find the rate on fourth class freight between Chicago and Fairfax, Minnesota, to have been 34 cents per hundred pounds, of which the M. & St. L. road received 17 cents per hundred pounds, or 50 per cent of the rate.

Q. For that haul of 178 miles there would be allowed by the Commission's order 23.15 cents?

A. Yes, sir.

Q. What was the local rate from Minneapolis to Fairfax, the old rate?

A. I quote from M. & St. L. G. F. O. No. 4580–A, Minnesota Railway Commission No. 15, fourth class from Minneapolis to Fairfax, 19 cents per hundred pounds.

Q. And the rate allowed by the Commission's order for the haul of 95 miles would be 14.82 cents?

A. Yes, sir.

Q. What was the through rate from Chicago to Dawson, fourth class?

A. I quote from M. & St. L. G. F. O. No. 7000, and I find the fourth class rate from Chicago to Dawson to have been 45 cents per hundred pounds, of which the Minneapolis & St.

Louis would receive 27 cents per hundred pounds, or 60 per cent of the through rate.

Q. For that haul of 253 miles, that would take the rate of 260 miles; for that haul of 260 miles, the rate allowed under the Commission's order would be 28.05 cents?

A. Yes, sir.

Q. What was the local rate from Minneapolis?

A. I quote from M. & St. L. G. F. D. No. 4580–A, M. R. C. No. 15, and find the fourth class rate from Minneapolis to Dawson to have been 26 cents per hundred pounds.

Q. And for that haul of 170 miles, under the Commission's order of September 6th, the rate allowed would be 22.17 cents?

A. The distance is 161 miles.

Q. Well that takes the rate for 165 miles, which would be 21.68 cents?

A. Yes, sir.

Q. Now, when we reach the fifth class we come to carload lots?

A. Yes, sir.

Q. The 5th class and classes A, B, C, D, and E refer altogether to carload lots of merchandise?

A. Yes, sir.

Q. What is the general character of the merchandise included in the fifth class under the Western Classification?

A. Somebody that had read it later than I could probably tell.

Q. If I can refresh your recollection, is it not a very heavy—

A. It is the heavier classes of merchandise, and I think some machinery.

Q. Machinery and iron?

A. Iron and things of that character.

Q. Class A consists of lighter merchandise, does it not?

A. Yes, and has a less application; the fifth class is a popular class, so to speak.

Q. The result of that is that a car will not contain as much tonnage of Class A as it will of Class 5?

A. That is the way it appears, but sometimes in working that out I have found that that does not apply in every case.

Q. That is the rule and that is the assumption, is it not?

A. And the theory, yes.

Q. But you have known instances where that did not always apply?

A. Yes.

Q. But as a rule it does?

A. I should say so.

Q. The result is that, so far as the order of the Commission is concerned, a higher rate per ton is allowed for merchandise of Class A than is allowed for merchandise of Class 5?

A. Yes, that is the way—

Q. In other words, Mr. Tittemore, the rates provided for the fifth class are 40 per cent of the rates provided for Class 1, while the rates provided for Class A are 45 per cent of the rates provided for Class 1?

A. Yes.

Q. What was the old rate upon merchandise of the fifth class from Chicago to Minneapolis, and what proportion of that rate was retained by the Minneapolis & St. Louis road?

A. I quote again from M. & St. L. G. F. O. No. 7000, and find the fifth class rate from Chicago to Minneapolis to have been 20 cents per hundred pounds, and figuring my divisions from M. & St. L. Division-sheet No. 41, I find you first deduct $3 per car for the M. & St. L. terminal and then take 23 per cent of the balance; so unless we arrive at what constitutes the weight of an average carload I can't tell in cents per hundred pounds.

Q. Look at the Western Classification.

A. The minimum weight, Western Classification, is 30,000 pounds for fifth class. On a 30,000 pound-car that would give

$60 per car gross. Deduct $3 for terminal and add that to 23 per cent of the balance, and it gives you $16.11 per car, or about 5⅓ cents per hundred pounds.

Q. What was the rate from Chicago to Minneapolis, (the old rate) upon Class A?

A. I quote from M. & St. L. G. F. O. 7000, and find Class A rate from Chicago to Minneapolis to have been 25 cents per hundred pounds; and taking 30,000 pounds, or the Western Classification minimum provided on Class A, it would be 6.5 cents per hundred pounds.

Q. The rate allowed by the order of the Commission for that haul of 110 miles from Albert Lea to Minneapolis, would be 13.03 cents for the 5th class, and 14.66 cents for the Class A?

A. Yes, sir.

Q. The rate from Chicago to Fairfax upon the fifth class and Class A?

A. I quote from M. & St. L. G. F. O. 7000, and find the rates from Chicago to Fairfax to have been—fifth class 26 cents per hundred pounds, Class A 28 cents per hundred pounds.

Q. I observe that the rate upon Class A from Chicago to Minneapolis is 25 per cent higher than the rate upon Class 5, while the rate upon Class A from Chicago to Fairfax is something less than 8 per cent higher than the rate upon Class 5.

A. Yes, sir.

Q. Can you account for that?

A. Conditions knocked out theory.

Q. The same conditions have produced rebates and "midnight" rates for many years in railroad traffic, have they not?

A. Rebates usually were made to prevent discriminations as between communities and individuals.

Q. Was it the same conditions to which you refer as being so superior to the theory that produced rebates and midnight rates?

A. Conditions made rebates, and conditions make all rates

—actual conditions. I don't mean to say, Mr. O'Brien,—

Q. Wherever there is a discrimination in rates?

A. I have not finished my answer, and I don't want it to go in in that way.

Q. Wherever there is a discrimination in rates?

Mr. BUTLER: Let him finish his answer, Mr. O'Brien.

Mr. O'BRIEN: I think he finished the answer sufficiently. He finished the answer to my question sufficiently. I suppose he can make any explanation afterwards.

Mr. BUTLER: Well, he says he has not.

Mr. O'BRIEN: I don't like to disturb the hilarity—

WITNESS: There is no hilarity.

Mr. O'BRIEN: —but I really think that you ought to let me ask my question.

Mr. BUTLER: But the character of the examination has been such that it seems to me the witness ought not to be prevented from answering.

Mr. O'BRIEN: Oh, ordinarily, I think that is true; I certainly didn't intend that, but I think he did answer the question.

Q. Discrimination in rates is always an eminently practical question, isn't it?

A. It is one of the most impractical questions I ever dealt with in my life.

Q. Then it is neither theoretical nor practical?

A. Distance tariffs may be made upon symmetry in form but actual tariffs doing business cannot be made so.

Q. I am simply trying to analyze your mot (which was very delightful) that it was a condition and not a theory. You enjoyed it very much and I enjoyed it very much, except that I didn't understand it fully.

A. I thought you would when you knew I selected it from Grover Cleveland.

Q. Well, I am trying to understand it now. Now, if these

discriminations are neither practical nor theoretical, what are they?

A. I might just as well try to explain how I could grasp the green out of the plant as to try to answer that question from a railroad standpoint. I can't do it.

Q. Well, we will just have to let that answer stand, then, as a delightful answer, without your understanding why you said it or my understanding why you said it?

A. That is, the difference between rates.

Q. Isn't it the fact that the large shippers in large centers, by reason of their influence and their standing and their associations, have been able to secure more favorable rates than people less favored in those respects?

A. If you will say "and their large tonnage," yes.

Q. So that, if we include that, they have been able?

A. Tonnage is always an important factor in making rates.

Q. Now, if rebates were designed and intended to prevent discrimination and did prevent discriminations, the stopping of rebates would be a public calamity, would it not?

A. I believe it has had the effect of increasing rates in the United States at least one hundred million dollars per year on the same tonnage.

Q. So that the stopping of rebates, if they have been stopped, has had the result of largely increasing the cost of transportation?

A. It has stopped the natural working of competition, and in that way must increase freight rates, because unless the man who makes the rates has something to do with the control of them he cannot meet natural competition, and competition is just as natural in fixing freight rates as the air is to the man who breathes.

Q. But I thought you said yesterday that one of the objects which should be in the mind of everybody would be to secure equal rates.

A. I don't think I said it as flat as that. I said that equality was quite a—

Q. Desirable condition.

A. —desirable condition when it can be attained by natural conditions or under natural conditions.

Q. Well, you mean that the equality won't be shown by dollars and cents or by the length of haul, but equality in which every imaginable condition shall be taken into consideration?

A. No, I shouldn't say every imaginable condition, but what I had in mind when I answered the question would be this: Take flour and the rate from Fairfax to Liverpool or to New York or to Chicago; and Minneapolis and the rate to Chicago and New York and Liverpool; the surplus of the traffic which enters into the net proceeds of the American people has something to do with the fixing of that rate, particularly the rate on foreign commodity, and I don't believe that just the *figure* of the rate, as between Fairfax and Minneapolis to Liverpool, should fix the rate to New York; but that the conditions should fix the equality, and if there is 20 cents difference or $2 a ton or $50 a ton, the rate that actually meets the conditions of competition, feeds the American people cheaper or sends the surplus to Europe at a higher figure, thereby giving the American farmer more money, I think that is the equality of rates that I mentioned yesterday and the equality of rates that I would like to see and they are not fixed by percentage.

Q. And the only persons competent to determine what are equal rates are the officials of the transportation company?

A. Not by a great sight. The shipper has always had more to say about that than the railroads could say. And I believe that the state and the national authorities should have something to say about it; but I have never been much in favor of the state or nation fixing a fixed factor so that it cannot be adjusted. A fixity of rates in the end will advance your rates in the United States until that principle in transportation is knocked out and it will be knocked out.

Q. That is, you have no objection to a law fixing rates, if you are not bound to obey it?

A. I didn't mean to say that. I mean that the state authorities or the national authorities must be permitted under the law to govern themselves, just as we govern ourselves; and as between the two, if the political power is removed, the rates will be agreed upon as between the state or the nation and the railroads, by the public, for everybody, and then you will get an equality of rates that will meet conditions, with theory absolutely demolished. That is what I meant.

Q. Well, I don't exactly understand what you mean, Mr. Tittemore. Do you mean that your idea is that the fixing of rates at a fixed definite amount which must be maintained is wrong?

A. I believe that the state or nation might fix and should fix a maximum rate which would prevent extortion; but when you come to use the practical rate under that rate, or the varying rates under that maximum rate, the state authority and the railroad should have the right to vary that rate to meet actual conditions as they come up from time to time.

Q. You mean that they should have the right to vary the rate in specific instances?

A. Where required, yes.

Q. In other words, to give secret rates?

A. *No, sir;* I think the secret rate should be abolished, absolutely. But it will have to come back again unless that principle I am speaking of is permitted our public officials who deal with rates. I mean to say, Mr. O'Brien, that if I am permitted as a traffic official to sell the capacity of my box-car, the cylinder power of my locomotive, for my stockholders, and the state has a right to step in and make an arbitrary rate under the law, that they must have the authority to allow me to

vary it promptly, quickly, instantly, if necessary, to meet a condition.

Q. That is, that while the maximum rates might be properly established, you insist upon the right and the necessity, of the transportation company to vary, to give a lower rate in any specific instance that it may see fit?

A. That it may see fit, yes, sir.

Q. And, therefore, in your judgment, unless that condition continues, the transportation company cannot be successfully carried on?

A. It cannot; it must have some power over its own business to meet conditions.

Q. So that you feel that, for the purpose of maintaining your transportation company, it is your duty to resist any attempt upon the part of the state to establish fixed and unchangeable rates?

A. Oh, no, I didn't mean to say that, and I would not resist any act of the state of that kind, but I would try to instruct the state how to give proper consideration, correct consideration, if you will, to the transportation question undivested of political prejudice or popular prejudice. If I might explain, so that you may know just what I mean, Mr. O'Brien, take the potato grown at Princeton, Minnesota, and shipped to Chicago: Now, when the potato gets on the table at Chicago, the freight rate paid from Princeton to Chicago enters into the value of the potato, and the value of the potato or the value of the freight rate is eaten by the person just as much as the eye of the potato. Now, supposing you have a large crop of poatoes at Princeton: The state Commission can vary the rate in the state of Minnesota, but the state of Minnesota has more potatoes than it wants; Chicago needs the potatoes; Illinois is destitute of potatoes, there has been a drought there. Now, the state might make a rate quick to the state line; I might come over to the state house and Mr. Staples and his associates would fix me out

quickly, but when I come to go to Chicago and wire for authority to meet a condition and I find a fixity there—thirty days' notice before I can reduce that rate—why, the potato might—there would be no market for the potato when I could get my rate in force. Now, there is the fixed condition that I don't like in transportation. I believe that we should be permitted to meet that condition at once. The Hepburn bill, as applied to the Minneapolis & St. Louis traffic, has absolutely knocked out its power to compete against the strong lines.

Q. And is the Minneapolis & St. Louis suffering from that condition now, the conditions produced by the Hepburn bill?

A. I believe that it suffers somewhat from that. I believe any law that fixes rates in the way that the Hepburn bill does, destroys competition, and the weaker line, of course, would suffer a little more in its application.

Q. Now, how can the increased cost of transportation by reason of the efforts of the federal and state governments to reduce the cost of transportation be at the same time a financial injury to the railroad companies?

A. Traffic flows in streams; and when a law changes the natural course of those streams it has the effect of adding to some one stream, and usually that is the stream with the largest bottom. I believe that the federal laws have had the effect of destroying competition, thereby throwing to the stronger perhaps more than they should have and leaving the weaker destitute. The result is that when you come to divide your expenses or cost of running the railroad, you can't do it in that way. The weaker line must pay as much for its labor, as much for its material, as much for everything that it uses and which enters into the transportation business, as the strongest line that exists; and when you destroy its power to compete or give it a fair field for competition, you advance the price of transportation without at the same time equalizing the cost of transportation.

Q. Now, Mr. Tittemore, let me see if I understand what you mean by that, because I want to get at it fairly, and it is certainly very interesting. If a small road traveling between here and Chicago by a more or less circuitous route and unable to compete in its equipment and service with a strong road having a short line, is compelled to charge the same passenger rate from here to Chicago that the strong road is, the result would be that the bulk of the passenger trade will go to the strong, well-equipped, comfortable road?

A. I should say that would be the fact.

Q. That would be the fact. And the result of the establishment of a flat passenger rate would be to deprive the smaller and weaker road of many passengers whose patronage it previously enjoyed?

A. That is apt to be the case; more than likely.

Q. Because, while that road was at liberty to furnish transportation at one-third or one-half the price maintained by the strong road, it could secure a larger number of passengers and a larger aggregate revenue?

A. Yes, by using a differential rate, but I shouldn't say as great a difference as a third or a half, but a substantial difference, as you suggest.

Q. And having its cars and equipment, and being compelled to run its trains, it is more profitable to that road to haul a large number of passengers at a reduced rate?

A. Well, a passenger train's expenses are largely fixed on a trip, and I don't think that anyone can figure out just how much it takes to carry a passenger; therefore, I believe that a train can go from here to Chicago with an equal number of cars well filled just about as cheaply as it could if it was empty, at least no human being with a pencil could determine the difference in the cost of handling that train.

Q. Now, with regard to freight: The small road with a long haul, has a certain amount of equipment and runs a certain

number of trains, I presume?

A. Yes.

Q. If it is permitted to offer a lower rate than the rate maintained upon the stronger roads with the short line, it secures more tonnage than it could under absolutely equal rates as between the roads?

A. Well, in the case of freight some other conditions besides what you have recited would be taken into account and would affect the traffic even as between a weak and a strong road.

Q. I know, but that condition would obtain, would it not?

A. That has an effect.

Q. So that the result of an absolutely similar rate and a prohibition of a cutting of that rate would deprive the smaller roads of a certain portion of their tonnage?

A. I wouldn't say the cutting of the rate. That is, I don't want to say the cut rate in the sense of a secret rate, but in the sense of a differential rate. I should say that unless they were permitted to use a differential rate they would lose some of their tonnage to the other road, but much depends upon the location of the industries on terminals when it comes to terminal points, but from branch points on roads is where it cuts the most figure.

Q. Well, to a greater or less extent the same conditions follow with reference to the transportation of freight that you have described with reference to the transportation of passengers?

A. Not to such a great extent, but to a degree.

Q. Therefore, it would be entirely possible that a rate which would be fair and ample to the transportation companies, accompanied by the conditions that rebates could not be extended, that no rates could be charged except the published rates, would result in destroying the traffic upon a weak road?

A. No; you can govern that in public tariffs.

Q. Although the truth would be that the rates were just in themselves, and if the weak road could obtain its fair proportion of the traffic at those rates, it would conduct its business at a handsome profit?

A. No, that is impracticable, impossible; because when secret rates were made they were made by the strong line as well as the weak line.

Q. Well, I am not speaking of what is impracticable; I am speaking on a certain assumption.

A. I don't believe that I get the exact case.

Q. I say, is it not true that under a system of law which prohibits rebates, prohibits special rates to indiyiduals,—

A. Special secret rates?

Q. Secret or public,—which prohibits rebates or the making of special rates to individuals, that a maximum rate established by the state, although ample in itself, may result by reason of competition in preventing a weak road from getting sufficient traffic to maintain itself?

A. Well, that doesn't apply to the weak road alone, that is, to the weakest road, it applies to all roads with varying degrees of strength.

Q. Hasn't that been your entire—

A. Referring to our own road, I would say that that might be true, but I didn't want to make that as a general application because it would not be true. It would affect other roads in the same degree.

Q. And isn't it true of your road?

A. I don't believe that it has proven that way on through traffic, because we are a very strong road in Minneapolis although we may be weaker in our through haul.

Q. Well, is it true or is it not true upon your road?

A. I think it is not true on our road on certain traffic.

Q. Then, if these rates are ample and sufficient as a general proposition, as applied to the general traffic in Minnesota, they

are ample and sufficient as to your road?

A. Wherever the rates—

Q. Now, just answer that question.

A. I can't do it, Mr. O'Brien, because I would be saying something that I know to be untrue if I answered it either way. If you will frame your question—

Q. Either one of two positions is true here—

A. No.

Q. —either your road is able to transport freight upon the same conditions and terms as the other roads, or it is not.

A. Well, let us say,—

Mr. BUTLER: Just a moment, Mr. O'Brien. If that question is read to you you will see that your own statement does not bear that out. If you consider the varying degrees of strength, most favored road and next favored, and middle and medium and worst.

WITNESS: That is what I am trying to get at.

Mr. BUTLER: You will see yourself that that is illogical.

Mr. O'BRIEN: I have no doubt it is illogical, but we have left the varying degrees of roads now, and we are talking about the Minneapolis & St. Louis.

WITNESS: Ask the question again, I will see if I can answer it.

Q. The objection I make, Mr. Tittemore, is that at one time you refer to your road as a road which can't sustain itself against competition, and the next time you tell us it is a very strong road in Minneapolis. Now take whichever horn of the dilemma you like, but stay to one horn.

A. Well, I will take the middle of the head between the two horns.

Q. All right, let us keep to that now.

A. Yes, I will if it is the truth. Now, what is the question?

Question read for the witness.

A. We may be very strong in our proportion of the haul on

traffic from Chicago or Peoria to Minneapolis, and a certain low rate might pay us if the tonnage is great enough. But when you take the Minneapolis & St. Louis road with its twelve or thirteen hundred miles of railroad, seven-eighths or nine-tenths of which is out in an agricultural country, and that agriculture simmered down to one kind of grain, practically,—wheat and its products—that makes us a weaker line than some road who has a more varied traffic in the agricultural section. We may be strong in this state of Minnesota in serving the state of Minnesota, but not strong in serving the maximum tonnage in the community through which it runs. That has a lot to do with the question of weak and strong lines as I have been speaking of it to-day.

Mr. O'Brien: Now will you read my question again?

Question re-read.

Q. Is not that true?

A. We must.

Q. Well now are you able?

A. We do. I couldn't tell you if we were able any more than I can tell you the reasonableness of a rate in itself. Our gross freight earnings—

Q. Wait a moment. Then there is no reason that you can give why a rate which would not be fair to the Omaha road, to the Milwaukee road, to the Great Northern road, to the Northern Pacific road, to the Soo road, is not fair as to your road?

A. If I had the tonnage of those roads between the points I would tell you pretty quick whether it is fair or reasonable as compared with ours, but with a road with only $2560 gross earnings in freight per annum, we are getting down to that point where we cannot stand for further reductions without absolute destruction.

Q. Do you know of any reason why a rate which is fair as to the roads I have mentioned is unfair as to your road?

A. Yes, sir.

Q. Well, now, give those reasons.

A. They have a greater territory to serve. They can, for instance, combine their local traffic so as to transport it perhaps at a lower rate than we could. I don't know whether that is the actual condition or not; I would have to see the figures. I would have to know. But it is fair to presume that any road hauling traffic with a gross traffic earnings of six or seven or ten or twenty thousand dollars per mile is stronger than a road who earns thirty-five hundred dollars per mile. But the distribution of the traffic has so much to do with it, Mr. O'Brien, that I would have to have the concrete cases before I could or would assume to give an opinion. I might give an opinion that would affect or injure some other road and at the same time be purely problematical and of no value in answering your question.

Q. Then, under that condition it is necessary that each road have separate rates or different rates?

A. I wish they might, it might do away with the difficulties that I am speaking about, but competition won't let us do it.

Q. As a matter of fact they have not?

A. They have not different rates.

Q. No, because you meet whatever rate the other roads put in?

A. We must do that, if we get the traffic.

Q. But in the case of the establishment of a rate by the state, according to your theory the rate must be so as to suit the condition of the weakest road?

A. Oh, no; no, no. I must be obtuse in my understanding or in my statement. I meant that the state must use the same methods in fixing its rates that the traffic man uses to fit the condition, at the time, on the instant, taking everything into consideration, and he should do it as quickly; and the traffic man should have the entrance, if he must go to the Commis-

sion or to the national Commission, to make those changes promptly and to vary the rates as competition and conditions require.

Q. Now, you have given us a large number of rates here covering a great deal of your tonnage in which you have stated that the rate was not compensatory?

A. I think I have.

Q. That is, you have carried that traffic at a positive loss?

A. I should say we carried that traffic (that is, some of it) that I said was not compensatory, non-remunerative,—I think we must have carried it at an absolute loss; I don't think it contributed what it should to our general expenses and the payment of them.

Q. It also appears that the traffic covered by these laws has been carried at a much higher, greater cost than that given in the law.

Mr. BUTLER: Rate, you mean?

Q. Higher rate.

A. At a higher rate?

Q. Yes.

A. I don't think that the examples we used are fair comparisons when you come to fit the rates to the tonnage.

Q. If you have been carrying a large portion of your tonnage at a positive loss and at the same time have maintained your road and paid your operating expenses, some of your traffic must have been carried at an excessive rate, must it not?

Mr. BUTLER: Mr. O'Brien, isn't your question faulty? Has he said a large portion of it was carried at a positive loss?

Mr. O'BRIEN: That is my recollection.

A. Well, I don't know what proportion of tonnage was hauled under these rates that you say that I have said was non-compensatory. For instance, some of that traffic would flow through other junctions and give us more money than through the junctions used here as examples, and we might get—the

same through rate and the proportion of the same through rate by one junction might be remunerative and not remunerative by another, but when we take the traffic going back in the same cars, that again might be remunerative to a certain degree, but when you take the rate in itself, as on soft coal from Albert Lea to Minneapolis at about 40 cents a ton, I believe there is an absolute loss in that traffic and that there is some traffic moves at that rate, but if I was to be asked how much of the reduction of the $326,000 or such a matter in our net that traffic bore, how much it contributed to that loss or deficit of nearly $90,000 net of the charges, why, I wouldn't be able to give it.

Q. Now, this case has been pending since the 31st of May, 1907?

A. Well, I presume so.

Q. You made an affidavit in behalf of the Complainant on the application for a preliminary injunction?

A. As I remember it I did.

Q. Don't you think that in preparing yourself for this case it would have been better if you had presented some tables showing your different tonnage and showing where a loss had been sustained and where it hadn't, instead of bringing a table such as Ex. 14, which doesn't show anything?

A. I didn't bring that table here.

Q. It was prepared under your direction?

A. Ex. 16?

Q. 14, I said.

A. 14, yes; Ex. 14 was prepared under my direction. Ex. 14 was prepared under my direction, but not entirely under my direction. The vice-president of the Company may have given orders. What I think is the fact is that I gave the rates and the division of the rates that would be effective and applied the reductions to certain tonnage that moved to find out what

the reductions and losses in the future would be, and I didn't suppose that—

Q. Now, the average earnings on your line in Minnesota were one cent and twelve one-thousandths of a cent?

A. That is as I remember quoting from that report yesterday.

Mr. BUTLER: What was that report?

WITNESS: The report filed with the Railroad Commission.

Mr. BUTLER: The Company's report of what year was that?

Mr. O'BRIEN: The year ending June 30, 1906.

Q. And upon the entire line the earnings per ton per mile were one cent and .153 of a cent?

A. I read those from the report to the Commission.

Q. And the average haul upon your road for merchandise according to these statements is 73 miles?

A. According to that statement, yes.

Mr. BUTLER: The average haul in Minnesota?

Mr. O'BRIEN: In Minnesota, merchandise.

Mr. BUTLER: Strictly intrastate business, I think.

Mr. O'BRIEN: In Minnesota merchandise.

Mr. BUTLER: In merchandise, yes.

Q. Now, the rate per ton per mile allowed for the lowest class of merchandise in the Commission's order of September 6th is one cent and .37 of a cent, is it not?

A. As I remember it, that is so.

Q. And that is for the very lowest class of merchandise?

A. As I remember it, yes.

Q. Does that indicate anything to your mind?

A. Nothing.

Q. Nothing at all?

A. The rate per ton per mile is absolutely valueless in the determination of the reasonableness of a rate.

Q. But if you had the entire tonnage, the entire distance that tonnage was hauled, each class of freight segregated, the

rate placed before it, it would tell the entire story, wouldn't it?

A. No, it wouldn't begin.

Q. It would tell a great part of it?

A. It wouldn't tell anything to me as a traffic man, no.

Q. Wouldn't tell anything more than your Ex. 14 has told?

A. The Ex. 14 has told the exact truth as expressed in it, but the rate per ton per mile don't express any truth.

Q. I am not arguing that. But if you had all those figures and all this tonnage, it would show nothing, I suppose?

A. I hope that I am not such a poor traffic man as to use the rate per ton per mile in any of my computations.

Q. That isn't my question.

A. Well, I can't answer it.

Q. And you know it isn't.

A. Well, I will answer your question if I can, Mr. O'Brien.

Q. I ask you whether, or not, if you had your tonnage from the different stations, had the rates upon that tonnage and the earnings upon that tonnage, that would have assisted in arriving at the reasonableness of the rates prescribed.

A. Well, it would have assisted so far as it would give me information, but it would not assist in the determination of the problem, that is, what is the reasonableness of a rate.

Q. Why haven't you brought here the actual results to your road under the order of the Commission of September 6th, when that has been in existence now for almost two years?

Mr. BUTLER: What do you mean by actual results, Mr. O'Brien?

Mr. O'BRIEN: What do actual results generally mean?

WITNESS: You mean the merchandise rates, Mr. O'Brien?

Mr. BUTLER: With respect to what—tonnage or earnings or distance hauled or what?

Mr. O'BRIEN: Everything.

Mr. BUTLER: Now, the Commission has the report, and it

is manifestly unfair for you to challenge this witness as if he had prepared this case. Now, the testimony is usually prepared, that is, the plan of it, is usually outlined by counsel.

Mr. O'BRIEN: Well, if you were on the stand, I would ask you why you didn't do it.

Mr. BUTLER: Yes, well I would tell you. When we get through you will probably see.

Mr. O'BRIEN: If you will be sworn, I will ask you.

Mr. BUTLER: And you must remember that Mr. Scott told you the tonnage, the way-bills were all open to you from which these tables are built, and it is manifestly unfair to criticise Mr. Tittemore, who did not do that figuring, to ask him why they are not here. Under the arrangement that has been made from the first to the last in this examination so far, the bases of all those figures are preserved and saved. Now, if the tables are not full enough, that is one thing, or do not cover the periods fully enough, Mr. Tittemore is not responsible for that, any more than General Young, not a bit. That must be obvious, it seems to me.

(Last question read by the Reporter.)

A. That is the order of the Commission in the merchandise case?

Q. Yes.

A. Well, I thought I was here to try and prove a result. I didn't know that I could prove it before I came here, so I didn't try. That is, I don't know what you mean by result. Do you mean the entire operation of the road? If you do, say the reduction in the merchandise. That is shown in this statement, and so far as I know that was as far as I could prepare it or the Auditor could prepare it. I would say that it didn't reflect very much in the result, but it is the commodity rates following on that that I am here, as I understand it, to look after and am testifying in the case.

Q. You have presented a statement here, Ex. 14, by which

you claim that the enforcement of the commodity rates will change practically every rate upon your road, state and interstate, and the result of which will be immense loss to your road?

A. Yes.

Q. On the 15th of November, 1906, a change in merchandise rates went into effect and was accepted by your road and has been in effect for nearly two years; you have had two years time, from your own records, from your own experience, from your own operations, to present to the Master a statement of the exact effect and result of those rates on your state business, on your interstate business, on every phase of your road; why have you not done so?

A. In the first place, we did not accept the order of the Commission of September 6th and put the rates in on November 15, 1906, voluntarily; but I protested against those rates, was in the Commissioners' office for days giving testimony as to the unreasonably low rates they were applying to our merchandise business, and, so far as I was concerned, thought I made an absolute case for our road against the rates. As to the length of time the rates have been in effect, under my experience and operating with those rates, I will say that I do not think that I could determine or any other man could determine or any power could determine just how far those merchandise rates affected our earnings. We know that on a stated tonnage they gave us just so much less than they would under another schedule of rates, and that has been, as I understand it, submitted here by our Company in proof, but to tell just how that affected the net, all I could say would be that it affected the net just to the extent that the rates were reduced.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Will you please state what the rate was from Chicago to Fairfax on fifth class merchandise and what proportion of that rate was retained by the Minneapolis & St. Louis?

A. I quote from G. F. O. No. 7000, and the fifth class rate from Chicago to Fairfax would be 22 cents per hundred pounds, of which rate the Minneapolis & St. Louis Company would receive as its proportion 50 per cent of the rate or 11 cents per hundred pounds.

Q. The rate allowed for that haul of 178 miles by the order of the Commission would be 18.52 cents?

A. Yes, sir.

Q. Now, class A.

A. Quoting from M. & St. L. G. F. O. 7000, I find the Class A rate between Chicago and Fairfax to have been 27 cents per hundred pounds.

Q. Of which the Minneapolis & St. Louis received—

A. Of which the Minneapolis & St. Louis received 13½ cents per hundred pounds as its proportion. I take the divisions from M. & St. L. division sheet No. 41.

Q. And the rate allowed for that haul by the order of the Commission, 180 miles, would be 20.84 cents?

A. Yes, sir.

Q. Now, what was the rate from Chicago to Dawson?

A. I quote from M. & St. L. G. F. O. No. 7000, and find the Fifth class rate from Chicago to Dawson, Minnesota, to have been 35 cents per hundred pounds, of which the Minneapolis & St. Louis road would earn 60 per cent, or 21 cents per hundred pounds as its proportion.

Q. And the amount allowed by the Commission's order for a haul of 260 miles is 22.40 cents?

A. Yes, sir.

Q. Now, the Class A from Chicago to Dawson?

A. Quoting from M. & St. L. G. F. O. No. 7000, I find the

Class A rate to have been from Chicago to Dawson 38 cents per hundred pounds, of which the Minneapolis & St. Louis would receive 60 per cent or 22.8 cents per hundred pounds.

Q. And the rate allowed by the order of the Commission for a haul of 260 miles is 25.25 cents?

A. Yes, sir.

Q. What was the local rate from Minneapolis to Fairfax in the Fifth class?

A. Quoting from M. & St. L. G. F. D. No. 4580-A, (M. R. C. No. 15), I find the Fifth class rate to have been, from Minneapolis to Fairfax, 15 cents per hundred pounds.

Q. And the rate allowed for a haul of 95 miles by the order of the Commission was 11.86 cents?

A. Yes.

Q. What was the rate to Dawson?

A. The Fifth class rate to Dawson under the same tariff would be 21 cents per hundred pounds.

Q. And the rate allowed by the order of the Commission for a haul of 165 miles is 17.34 cents?

A. Yes, sir.

Q. Now, the rate to Fairfax for Class A.

A. 15 cents per hundred pounds, quoting from the same tariff.

Q. And the rate allowed by the Commission for a haul of 95 miles is 13.34 cents?

A. Yes, sir.

Q. And the rate for Class A to Dawson?

A. 21 cents per hundred pounds, quoting from the same tariff.

Q. As against a rate of 19.50 cents as allowed by the order of the Commission?

A. Yes, sir.

Q. Now, will you please give us the rates from Chicago to Minneapolis of classes B, C, D, and E, and in each case the

proportion that went to the Minneapolis & St. Louis?

A. I quote from Minneapolis & St. Louis G. F. O. No. 7000, and find the rates to have been: Class B, 20 cents, of which the M. & St. L. road would receive, out of a 30,000 capacity car, 5⅓ cents per hundred pounds.

Q. As against 11.40 cents allowed for a haul of 110 miles by the order of the Commission?

A. I think so.

Q. Class C?

A. Class C rate (which excludes potatoes), would be 17 cents per hundred pounds; using 30,000 pounds for a carload, minimum weight, the M. & St. L. Company would receive 4.9 cents per hundred pounds as its proportion.

Q. As against 9.77 cents allowed by the order of the Commission for a haul of 110 miles?

A. Yes, sir. I quote my divisions from M. & St. L. Division-sheet No. 41.

Q. Class D.

A. Class D rate I find to have been 14 cents per hundred pounds, and using 30,000 pounds to make a carload, the M. & St. L. proportion would be 3.9 cents per hundred pounds.

Q. As against 8.15 cents allowed by the Commission for a haul of 110 miles?

A. Yes.

Q. Class E?

A. M. & St. L. G.F.O. No. 7000 quoted Class E 13 cents from Chicago to Minneapolis, of which the M. & St. L. would receive, based on a 30,000 capacity car, 3¾ cents per hundred pounds.

Q. As against 6.52 cents allowed by the Commission's order for a haul of 110 miles?

A. Yes, sir.

Q. Now, will you please give us the rate on each of those classes from Minneapolis to Albert Lea, in force on the road prior to the order of the Commission?

A. M. & St. L. G. F. D., 4580-A (M. R. C. No. 15), I find the rates from Minneapolis to Albert Lea to be, Class B, 13 cents; Class C, 11 cents; Class D, 10 cents; Class E, 7 cents.

Q. And was the same rate charged to stations intervening between Albert Lea and Minneapolis?

A. They varied. Hartland and Manchester carried the same rates on those four classes.

Mr. BUTLER: From Minneapolis to Manchester?

WITNESS: And to Hartland. Then the rates from Minneapolis to Otisco and New Richland were the same on the four classes.

Q. Do you mean the same as Albert Lea, or the same as—

A. No, they were the same, as between each other.

Q. Now, what was the rate on those four classes from Chicago to Fairfax, and what proportion of that rate was retained by the Minneapolis & St. Louis?

A. I quote from M. & St. L. G. F. O. 7000 (and whenever I speak of the Class C rate it excludes potatoes). Class B rate from Chicago to Fairfax would be 24 cents per hundred pounds; Class C rate from Chicago to Fairfax, 20 cents per hundred pounds; Class D rate 17 cents per hundred pounds; Class E, 15 cents per hundred pounds; of which the Minneapolis & St. Louis railroad receives as its proportion 50 per cent of the rate, or 12 cents per hundred pounds Class B; 10 cents Class C; 8½ cents Class D; 7½ cents Class E.

Q. As against a rate allowed by the Commission for a haul of 180 miles of 16.21 cents Class B; 13.89 cents Class C; 15.58 cents Class D, and 9.26 cents Class E?

A. Yes.

Q. Now, please give the same rates to Dawson.

A. Quoting from the same tariff (and excluding potatoes from Class C) the rates were, from Chicago to Dawson, Class B, 33; Class C, 27; Class D, 22; Class E, 19; of which through rates the Minneapolis & St. Louis railroad receives 60 per cent,

or on Class B, 19.8 cents per hundred pounds, Class C, 16.2 cents per hundred pounds, Class D, 13.2 cents per hundred pounds, and Class E, 11.4 cents per hundred pounds.

Q. As against a rate allowed in the order of the Commission for a haul of 260 miles of Class B, 19.64 cents, Class C, 16.83 cents; Class D, 14.03 cents; Class E, 11.22 cents?

A. Yes.

Q. Now, will you give us the local rate on each of those classes from Minneapolis to Fairfax, a 95-mile haul?

A. Quoting from M. & St. L. G. F. D. No. 4580-A (M. R. C. No. 15), I find the rate to have been from Minneapolis to Fairfax: Class B, 13 cents per hundred pounds; Class C, 11 cents per hundred pounds; Class D, 10 cents per hundred pounds; Class E, 8 cents per hundred pounds.

Q. As against a rate for a haul of 95 miles by the Commission's order of—B, 10.37 cents; C, 8.89 cents; D, 7.41 cents; and E, 5.93 cents?

A. Yes, sir.

Q. Now, the old rate to Dawson on those four classes?

A. Quoting from the same tariff, the rates from Minneapolis to Dawson were,—Class B, 18; Class C, 16; Class D, 12; Class E, 10 cents per hundred pounds.

Q. As against a rate in the order of the Commission for a haul of 170 miles of,—B, 15.52 cents; C, 13.30 cents; D, 11.09 cents, and E, 8.87 cents?

A. Yes.

Q. Can you state what proportion of the tonnage carried by your road on class rates is interstate?

A. I cannot. I can't even approximate it.

Q. Can you give any idea of the proportion of the traffic in Minnesota in merchandise included within the class rates which is interstate tonnage?

A. I couldn't without I gave it considerable thought and looked over some figures.

Q. Now, Mr. Tittemore, I wish you would explain this question of the classification of freight under the Western Classification. Take, for instance, sugar; supposing less than carload sugar was billed from Chicago to Minneapolis on a through rate, what class would that take?

A. I find that in the index of the Western Classification we are referred to certain pages and certain items; I find "sugar burnt," I find "sugar cane"; I find "sugar flavored icing,"—

Q. What we wanted to have you do was to have you take one class, and if there is more than one class of sugar, take one class of sugar and tell us what class that would be in in less than carload, and what class it would be in in a carload.

A. Out of twelve kinds of sugar classified here I take "sugar, grape, in bags," and I find that if it is billed in carloads it would take the Fifth class rate, and if it should be shipped in less than carload shipments it would be in the Fourth class rate.

Q. Now, can you, without any difficulty, find an article of merchandise there that would belong to the First class rate?

A. I find hats and caps, including straw bonnets, hats and caps untrimmed in boxes, First class.

Q. Is that less than carload?

A. That is less than carload.

Q. Now, in carload lots, what class would those articles be in?

A. No carload class provided for that article.

Q. There is no carload rate provided?

A. There is no carload rate provided.

Q. That is because the commodity is so light that a car could not be loaded to a capacity sufficient to give it a large enough tonnage to enable it to take a remunerative rate at carload rates?

A. That is the consideration, largely, that fixes the rate or the classification.

Q. That is, a carload of straw hats at any of the carload

rates would not earn a sufficient revenue?

A. That is it.

The MASTER: Aren't they shipped in carloads?

WITNESS: No, sir.

Mr. O'BRIEN: They may be shipped in carload lots, but not in carload rates.

The MASTER: That is what I wanted to know.

Q. They must be shipped in carloads, must they not?

A. Why, you can put as many of them as you please in a car, and they will go at that First class rate.

Q. But it makes no difference whether it is in carloads or less than carloads, it takes the same rate?

A. Yes.

Q. Now, take some class of farm machinery.

A. Well, take "agricultural implements, not including hand implements, as follows," that would include "wind-mills and parts thereof, etc., and barrel-carts, bean-pickers, beet-harvesters, knocked down and set up, carried in bundles and carried loose, boll weevil machines."

Q. Now, those matters, what class are they in when shipped in carload lots?

A. Class A, with minimum weight of 20,000 pounds per car.

Q. And when they are not shipped in carload lots, what class do they belong to?

A. Barrell-carts would take 1½ First class rate; when knocked down, flat, they would take First class rate; bean-pickers set up, crated, would take 1½ First class rate.

Q. In what class is wheat in carload lots? It isn't there, is it?

A. No, it isn't here.

Q. Because wheat is one of the commodities that has a special rate not included in any classification?

A. That is right.

Q. Is there a class rate for seeds?

A. I was going to look for grain. I don't find it under "wheat." Well, now, I find in the index "Grain not otherwise specified." We will look at that. It simply gives "grain spouts." Grasses in boxes or barrels would be First class. I don't find it in here. I was going to see about wheat. I find in the classification that "Grain not otherwise specified, in bags, boxes or barrels, in less than carload lots," would be billed at Fourth class rate; except, for instance, buckwheat in barrels would take Fourth class rate, but it is classified differently, because it specifies just what a barrel must weigh, the estimated weight of that barrel; that would not apply in the case of other grain.

Mr. O'BRIEN: I would like Mr. Staples to make an explanation with regard to the method of compilation adopted in preparing this Western Classification.

The MASTER: Shall we take it now?

Mr. BUTLER: Yes.

Mr. O'BRIEN: The Court understands that this publication is one of the railroads themselves, it is not an official publication of the state, but it was followed by the Commission in their making their rates.

Mr. BUTLER: And is referred to as a part of the rate made by the State.

The MASTER: It is the basis of the Western Classification, spoken of in the pleadings and generally.

Commissioner STAPLES: Under the law and the practice, our Commission is required to adopt a classification for the State, and after reviewing the Western Classification some years ago, we adopted that as the classification for Minnesota. The classification itself is made up by a committee consisting of one from each of the roads which use this classification. We have several classifications in the United States, but this takes in certain railroads, certain territory. That committee meets twice a year to consider the question of changes in the

classification, additions to it or items to take out, certain items to be put into a lower class or a higher class. They submit those proposed changes to our Commission, as this is our classification. We indicate to the committee "We will consent to those changes, certain ones; certain changes we will not consent to." Then our classification, or the State classification, may not always be in perfect harmony with the Western Classification. Then we note the exceptions. And those are considered with reference to the character of traffic we have here. The plan of the classification is very simple in a way, but it is impossible to find what articles are in Class 1 or Class 2 or Class 3 segregated; they are not put into the classification that way. It starts out with an index, just on the same plan as the dictionary, and every article that begins with the letter A will follow continuously; for instance, axes; and, as Mr. Tittemore explained, I look for the word "axes"; I find it under "A," and it says "See page 135, item 27," and I simply turn to page 135 and find item No. 27, and it reads "Axes, minimum carload weight 30,000 pounds, 2 (that is, Class 2) if shipped in l. c. l." (that is, less than carload lots). If in carload lots it would be Class 3. Then we go to the schedule of the rate (or the clerk does) and he finds that on Class 2 or Class 3 the rate is so much, and he has the weight of the shipment and he computes the amount of the freight. He has the rate schedule and the classification schedule before him. That is the only way he can determine the rate or the amount of the freight to be charged. I explain this so as to show to the Master that it is impossible to find every article that is in Class 1 or every article that is in Class 2, segregated; they come in here just according to their alphabetical order.

The MASTER: The same kind of article may be in several kinds or classes and scattered through the book in different places?

Commissioner STAPLES: No.

Mr. O'BRIEN: Yes, you find axes referred to under the letter "A."

Commissioner STAPLES: Oh, the same classification?

The MASTER: Yes.

Commissioner STAPLES: I thought you said "article." Oh, the same class will be all through the book.

Mr. O'BRIEN: Now, look at "Hatchet." I understood you to say the same class of articles.

Commissioner STAPLES: Hatchets and hammers would be shipped under Class 2.

Mr. BUTLER: It is consented by the parties that the Master and the Court may have recourse to the Western Classification, which will be furnished but not included in the record, for any purpose that they may desire to use them, to the same extent as if incorporated in the record.

Q. Does it ever occur, and if so, how frequently, that a carload of freight shipped upon the Illinois Central or the Iowa Central from Illinois consists of merchandise, separate portions of which are billed to different stations upon the line of the Minneapolis & St. Louis road?

A. There are such cars, and I should say that that would occur quite frequently.

Q. That is, such a car is carried at the carload-through rate?

A. Not where billed as merchandise. That would be different kinds of merchandise in the same car, but all shipments at the less-than-carload rates is the way I understood your question, Mr. O'Brien. If it was to be a carload lot it would probably be designated as one thing, like prunes, sugar, paper.

Q. What I mean to say is this: Supposing a carload of merchandise were consigned from one shipper in Chicago, routed over the Illinois Central and the Minneapolis & St. Louis, and a fourth of the contents of that car were billed to Hartland, one-fourth to New Richland, one-fourth to Otisco, and one-

fourth to Waseca, all of the merchandise being of a class which when carried in carload lots would be entitled to rates for at least the Fifth class, and all the contents of the car being merchandise of the same kind what rate would that merchandise take?

A. It would take the less-than-carload classified rate from that point in Illinois to each station and they would be called less-than-carload-lot shipments.

Q. So that, to obtain carload rates, there must be identity of shipper, identity of freight and identity of destination?

A. Yes, sir.

Q. Now, suppose the freight were consigned to four merchants in the same town on your road, would that freight take the carload rates or less-than-carload rates?

A. It would take the less-than-carload rates, but that is sometimes defeated by three or four men at one town arranging to have it billed to one of them and then they make the distribution after, but so long as it is billed to different people it must take the l. c. l. rate.

Q. In preparing Exhibit 14 you first ascertained the revenue received by the Minneapolis & St. Louis road for the carriage of the commodities therein described during the year ending June 30, 1906?

A. Yes, sir.

Q. And then computed how much less those revenues would have been had the rates provided by Chapter 232 been in force during that period?

A. Yes, sir.

Q. As a matter of fact, hadn't the rates upon the commodities mentioned in Exhibit 14 been reduced between the 30th of June, 1906, and the passage of Chapter 232, Laws of 1907?

A. I think so; I think there was a voluntary reduction of rates, that I testified to in the early part of the case, and I think I am right on that, but I will have to find out for you.

Q. I don't think there is any doubt about it.

A. Well, I think not, either. I think there is no doubt that the reduction was made from some points on some commodities in Scott's Exhibit 14 before that bill was passed.

Q. So that the true method of arriving at the loss would have been to calculate the difference between the new rates which had been adopted between the 30th of June and April, 1906, and April 18, 1907, and the rates as found in the act of April 18, 1907, or Chapter 232?

A. Well, that would be one way to do it, but I don't think it would have been any better or truer than this way. I presume that we took—I know that I took this period because it covered a year, and our losses and profits are computed for those periods of time for which we make our reports to our stockholders.

Q. But this exhibit doesn't show, and you are not able to state, what would have been the loss in revenue during the period covered by Exhibit 14 if the new rates voluntarily put in by the roads between the 30th of June, 1906, and the 18th of April, 1907, had been in operation during the period covered by Exhibit 14?

A. The period you refer to is not in Exhibit 14?

Q. And the loss which you claim will be caused by the enforcement of Chapter 232 can only be the difference between the new voluntary rates and the rate provided by Chapter 232.

A. Yes, the voluntary rate must be taken into consideration, will have to be.

Q. If that is so, then Exhibit 14 does not state the real condition.

Mr. BUTLER: Well, it states what would have been the loss on varied business in that period, and it doesn't claim to state anything else, had these rates been in effect.

Mr. DURMENT: But the same business done a year later

would not have produced the same loss as in that Exhibit 14; that is the point.

WITNESS: It states the actual condition for the time that the statement covers, that is all; what the loss would have been had the rates been applied for the fiscal year ending June 30, 1906.

Q. At the time of the passage of Chapter 232, Laws of 1907, April 18, 1907, the rates maintained by the Minneapolis & St. Louis road upon the commodities named in Chapter 232 during the year ending June 30, 1906, were not in force?

A. No.

Q. So that if one desired to ascertain the actual effect upon the revenues of the road from the enforcement of Chapter 232, it would be necessary to ascertain what those revenues would have amounted to under the rates then in force and compare that revenue with the revenue which would be derived under Chapter 232?

A. That would be one way of doing it.

Q. That course was not adopted in preparing Exhibit 14?

A. That is evident from Exhibit 14—that it covers another period.

Q. Was that course adopted in preparing Exhibit 15?

A. Not exactly; we sought for an average month and secured it in the month of September, 1907, and made our computations on that basis.

Q. Now, the reduction that I spoke of as having been voluntarily made between June 30, 1906, and April 18, 1907, was upon all of the commodities mentioned in Exhibits 14 and 15?

A. I think not; and if on all commodities only three or four points on our road were affected.

Q. Well, did those reductions include reductions upon wheat?

A. Yes, sir, from some points on the M. & St. L.

Q. Can you give us the reduction upon wheat and flour, that is, the voluntary reduction?

A. The voluntary reductions that we were compelled to make to meet competition are to Minneapolis from Morton, Minnesota, ½ cent per hundred pounds; Redwood, Minnesota to Hanley Falls one cent per hundred pounds—which was brought about by the Great Northern's reduction at Hanley Falls; Hazel Run to Marietta one cent per hundred pounds; and from New Ulm to Dunnell on the southwestern division, one cent per hundred pounds.

Q. Now, how much did Chapter 232 reduce the rate upon those commodities, from those same points, from your new rates?

A. The so-called voluntary reduction on wheat at Morton was ½ cent per hundred pounds; then Chapter 232 ordered a further reduction of 1.2 cents per hundred pounds on wheat at Morton. Then at Redwood, where the so-called voluntary reduction was one cent per hundred pounds, the statute ordered a further reduction of 2 cents per hundred pounds; then at Delhi and at Bellview, where the so-called voluntary reduction amounted to one cent, the statute, Chapter 232, ordered a further reduction of 1.8 cents per hundred pounds; and at Echo, where the so-called voluntary reduction was one cent per hundred pounds, Statute 232, ordered a further reduction of 1.9 cents per hundred pounds; and at Wood Lake and Hanley Falls, where the so-called voluntary reduction was one cent, Statute 232 ordered a further reduction of 1.6 cents per hundred pounds; then at Hazel Run, where the so-called voluntary reduction was one cent, the statute ordered a further reduction of 2 cents per hundred pounds; at Clarkfield they ordered a further reduction of 2.1 cents per hundred pounds; at Boyd, a further reduction of 1.8 cents per hundred pounds; at Dawson, 1.9 cents per hundred pounds; same at Madison; at Marietta, 1.8 cents per hundred pounds further reduction. Then on the

southwestern division from New Ulm to Dunnell, where the so-called voluntary reduction was ½ cent per hundred pounds, Statute 232 would make a further reduction of 2.1 cents per hundred pounds; at Searles, 1.9 cents per hundred pounds; at Hanska, where the so-called voluntary reduction was ½ cent, the statute ordered a further reduction of 1.7 cents per hundred pounds; at LaSalle, where the so-called voluntary reduction was 1½ cents per hundred pounds, Statute 232 ordered a further reduction of 1.4 cents per hundred pounds; at St. James, where the so-called voluntary reduction was 1½ cents per hundred pounds, Statute 232 ordered a further reduction of 1½ cents per hundred pounds; at Echols, where the so-called voluntary reduction was 1½ cents per hundred pounds, Statute 232 ordered a further reduction of 1.3 cents per hundred pounds; at Ormsby, 1.4 cents per hundred pounds; at Monterey, 1½ cents per hundred pounds; at Sherburne, 1.6 cents per hundred pounds; at Dunnell, 1.4 cents per hundred pounds.

Q. Now, if you were to make a calculation based upon the rates which were in force during the year ending June 30, 1906, as compared with the rates provided by Chapter 232 upon wheat, you would obtain a higher percentage of reduction than you would by comparing the rate which you have designated as the so-called voluntary rate with the rates provided by Chapter 232?

A. That is so, but I don't think the computations were made that way for the representative month of September which is submitted.

Q. I call your attention to the fact that in Scott's Exhibit 14, under the item "Wheat, flour, Minnesota state traffic," the percentage of reduction is given at 17.71 per cent.

A. Yes, sir.

Q. While in Scott's Exhibit 15 the percentage of reduction under the item "Wheat, flour, Minnesota state traffic" is given

at 20.46 per cent.

A. Yes, sir, that is correct.

Q. Can you explain that?

A. I could if I could get at the tonnage, but I can't explain it off-hand. I think tonnage fixed the percentage of loss, the difference in the tonnage as between the periods.

The MASTER: Did I understand you to suggest that it might be by reason of a difference in tonnage?

WITNESS: In the tonnage, the places from which the wheat moved. September is taken as an average month, but the wheat might move from one place in Scott's Exhibit 14 and in Exhibit 15 from another territory.

Mr. BUTLER: And the reductions at the different points were not uniform?

WITNESS: Not uniform, and would very soon explain a less than 3 per cent reduction.

Q. If the commodity tariff is on a mathematically uniform scale, and your explanation of the difference in the percentage of reductions is correct, it includes a demonstration, does it not, that your former rates were not based upon any equal division of rates, or mathematically uniform?

A. It would not, of course, without the tonnage, show any such conclusion.

Q. It is true, is it not, that your rates did not bear any mathematical proportion to each other?

A. The most careful mathematical proportion we could get, but there was no decorum or exact relation as between the print in the tariff.

Q. Well, now, did or did not your rates upon wheat and flour from various stations upon your road bear any mathematical proportion or relation to each other?

A. In looking over the tariff that fixed the rates for the period covered by Scott's Exhibit 14 (which I understand to be M. & St. L. G. F. O. No. 6100) I find there is a proper math-

ematical proportion between the rates as far as it could be made and taking competition into consideration.

Q. What is the mathematical proportion between the rate on wheat from Arlington to Minneapolis, distance 60 miles, and Hazel Run to Minneapolis, a distance of 147 miles? They are the same rate, are they not?

A. I find that the rate on wheat and flour Arlington to Minneapolis, would be 7 cents per hundred pounds; at Gaylord, 8 cents per hundred pounds; Winthrop, 8½ cents per hundred pounds; Gibbon, 8½ cents per hundred pounds; Fairfax and Franklin, 9 cents per hundred pounds; Morton, 9½ cents per hundred pounds; Redwood, Minnesota, to and including Hanley Falls, 10 cents per hundred pounds.

Q. I think I was mistaken in that, it was the rate on soft coal that was the same from Arlington and Hazel Run, was it not?

A. I think so, yes; $1.80 a ton from some point, Duluth, I think.

Q. Did the rates upon grain on your road prior to June 30, 1906, amount to practically the same as the rate upon the other roads in the southern part of the state?

A. I think they did.

Q. And how did all of those rates upon wheat and grain compare with the rates upon the Great Northern, Northern Pacific and Soo roads?

A. As I remember it they were lower, although I am not sure.

Q. Which were lower?

A. The rates in the southern part of the state.

Q. Upon grain and grain products?

A. That is as I remember it.

Q. Have you any of the contracts of the other roads?

A. I have not.

Q. Isn't it true that the rates upon grain for equal distances

in the northern part of the state were very much lower than the rates in the southern part of the state?

A. Possibly; I haven't the contracts with me and had no interest in looking them up at any time.

Q. And that the rates upon merchandise in the northern part of the state were considerably higher than the rates upon merchandise in the southern part of the state for equal distances?

A. Well, that might be; I don't remember.

Q. It is true, is it not, that the effect of the enforcement of the order of the Commission of September 6, 1906, and of Chapter 232 would be to make the freight rates equal all over the state?

A. Yes, it would have had that effect.

Adjourned until August 25th, at 10 A. M.